

No. 12569

United States
Court of Appeals
for the Ninth Circuit.

ALFRED HEADY and ESTHER HEADY,
Doing Business as Heady Hotel,
Appellants,
vs.
LAWRENCE E. SLAVIN,
Appellee.

Transcript of Record

Appeal from the District Court
Territory of Alaska,
Third Division

FILED

OCT 16 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

BAILEY E. BELL,

J. L. McCARREY, JR.,

Anchorage, Alaska.

For Appellee:

R. J. McNEALY,

BUELL A. NESBETT,

Homer, Alaska.

In the United States District Court for the
Territory of Alaska, Third Division

No. Sel. 5707

LAWRENCE E. SLAVIN,

Plaintiff,

vs.

ALFRED HEADY and ESTHER HEADY d/b/a
HEADY HOTEL,

Defendants.

COMPLAINT

Now comes the Plaintiff and of the Defendants,
complains, alleges, and says:

I.

That Plaintiff worked as a carpenter for the Defendants in the construction of Defendants hotel over a period of sixteen (16) forty hour weeks from the second day of October, 1947, to the 23rd day of January, 1948, inclusive, at the special instance and request of the said Defendants, and for the stipulated wage of two (\$2.00) Dollars per hour for each and every hour so worked by Plaintiff, and in addition to the said two dollars per hour, Plaintiff was to receive board and lodging from Defendants, which board was provided by the said Defendants.

II.

That on or about the 23rd day of January, 1948, this Plaintiff and the said Defendants talked together concerning the said work and skilled labor

and the wages due therefore, but the Defendants became evasive as to payment, first agreeing to transfer a certain sawmill by Bill of Sale to Plaintiff, which they failed and neglected to do, and later agreeing to reimburse Plaintiff either in cash or in kind for his skilled labor.

III.

That there is due and owing the said Plaintiff from the Defendants the sum of Twelve Hundred Eighty (\$1280.00) Dollars, which is the fair and reasonable value for Plaintiff's wages, and that though demand has been made by Plaintiff, the Defendants have wholly neglected and refused to pay the said wages or any part thereof, either in cash or in kind.

Wherefore, the Plaintiff prays judgment against Defendants:

1. For the sum of \$1280.00 with interest thereon at the rate of six per cent per annum from the 23rd day of January, 1948.

2. The sum of \$500.00, as fees for Plaintiff's attorney.

3. The Plaintiff's costs and disbursements in this action.

/s/ R. J. McNEALY,

Attorney for Plaintiff.

United States of America,
Territory of Alaska—ss.

Lawrence E. Slavin, being first duly sworn on oath, deposes and says: That he is the Plaintiff in the above-entitled action; that he has read the foregoing Complaint, knows the contents thereof, and that the allegations contained therein are true as he verily believes.

/s/ LAWRENCE E. SLAVIN.

Subscribed and sworn to before me this 6th day of September, 1949.

[Seal] /s/ R. J. McNEALY,
Notary Public for Alaska.

My Commission expires 3/8/'50.

[Endorsed]: Filed September 7, 1949.

[Title of District Court and Cause.]

ANSWER

Come now the above-named Defendants, Alfred Heady and Esther Heady, doing business as Heady Hotel, and for answer to the complaint filed by the Plaintiff herein, admit, allege and deny as follows, to wit:

I.

Defendants admit that Larry Slavin did work some for the Defendants in the construction of the hotel, but deny specifically that he ever worked

sixteen forty-hour weeks or anything like that amount.

II.

Defendants specifically deny that they ever agreed to pay the Plaintiff anything for said work and allege that the Plaintiff offered to work and stated that he would board and room with the Defendants; that he needed something to do and that no price for work was ever agreed upon, except that these Defendants, acting by and through Alfred Heady, told the Plaintiff that they had no money to pay him for labor; that he and Tommy were going ahead and build it and the Plaintiff insisted on helping and stated that he needed a place to live and without any agreement for the payment of any money whatsoever, he did commence working and did work at intervals, never a full week nor never a full day, only working as he saw fit, was never told to do any particular thing, his work was that of a voluntary helper without consideration and gratuitous, and all during said period of time Defendants furnished him board and room as agreed and the said Plaintiff never at any time contended that the Defendants owed him anything or even suggested to them that they were indebted to him in any manner whatsoever until the filing of the complaint in this action, which was done on or about the 6th day of September, 1949.

III.

Defendants specifically deny that they are indebted to the Plaintiff in any sum whatsoever.

Wherefore, these Defendants pray:

1. That Plaintiff take nothing by his complaint.

2. That his said complaint be dismissed.

3. That these defendants recover their costs, together with a reasonable attorney's fee, as provided by law.

/s/ ALFRED HEADY.

United States of America,
Territory of Alaska—ss.

Alfred Heady, being first duly sworn, on oath deposes and says:

That he is one of the Defendants in the above-entitled action and makes this verification for and on behalf of himself and Esther Heady; that he has read the above and foregoing Answer and knows the contents thereof, and believes the same to be true.

/s/ ALFRED HEADY.

Subscribed and Sworn to before me, a Notary Public in and for the Territory of Alaska, this 30th day of September, 1949.

[Seal] /s/ J. L. McCARREY, JR.,
Notary Public in and for
Alaska.

My Commission expires 4/25/50.

[Endorsed]: Filed October 4, 1949.

[Title of District Court and Cause.]

REPLY

Comes now the plaintiff and for reply to the Answer of the above-named defendants on file in this action, admits and denies as follows:

Plaintiff denies each and every statement and allegation made by the defendants in their Answer which is not in full accord and agreement with plaintiff's Complaint, except only defendants' statement that "no price for work was agreed upon" and in that plaintiff understood he was to have going carpenters' wages.

Wherefore, having fully replied to defendants' Answer, the plaintiff prays for judgment against defendants as in the prayer attached to plaintiff's Complaint filed in the above-entitled action.

/s/ ROBERT J. McNEALY,
Attorney for Plaintiff.

United States of America,
Territory of Alaska—ss.

Robert J. McNealy, being first duly sworn on oath, deposes and says that he is attorney for the plaintiff in the above-entitled action, that he has read the foregoing reply and knows the contents thereof to be true as he verily believes; that plaintiff is absent from Seldovia, Alaska, wherefore he makes this verification.

/s/ ROBERT J. McNEALY,

Subscribed and sworn before me this 11th day of October, 1949.

[Seal]: /s/ V. M. MURRAY,

Notary Public for Alaska.

My Commission expires 11/14/50.

[Endorsed]: Filed October 19, 1949.

[Title of District Court and Cause.]

VERDICT No. I.

We, the jury, duly selected, impaneled and sworn to try the above-entitled cause, do find for the plaintiff and against the defendants, and find that the plaintiff is entitled to recover of and from the defendants the sum of Twelve Hundred Eighty Dollars (\$1280.00), together with interest thereon at the rate of 6 per cent per annum from January 23, 1948.

Dated at Anchorage, Alaska, this 9th day of February, 1950.

/s/ H. L. BLISS,

Foreman.

Entered Journal No. G-21, Page No. 93, Feb. 9, 1950.

[Endorsed]: Filed and entered February 9, 1950.

DEFENDANT'S OFFERED INSTRUCTION
No. I.

You are further instructed that it is the contention of the defendants that they gave the defendant $\frac{1}{2}$ interest in a sawmill that the plaintiff took over the mill and accepted it, repaired it, assisted in operating it and defendants had invested in the mill over \$1000.00 and that the plaintiff said, "This is just a gift from heaven as you owe me nothing."

This in only a circumstance to be taken in consideration with all other evidence.

Given: and exception allowed to Defendant.

.....

District Judge.

Refused: exception allowed to Defendants.

/s/ ANTHONY J. DIMOND,

District Judge.

[Endorsed]: Filed February 9, 1950.

[Title of District Court and Cause.]

INSTRUCTIONS TO THE JURY

Ladies and Gentlemen of the Jury:

It now becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon and disposition of this case. When you were accepted as jurors you obligated yourselves by oath to try well and truly the matters at

issue between the plaintiff and the defendants in this case, and a true verdict render according to the law and the evidence as given you on the trial. That oath means that you are not to be swayed by passion, sympathy or prejudice, but that your verdict should be the result of your careful consideration of all the evidence in the case. It is equally your duty to accept and follow the law as given to you in the instructions of the Court, even though you may think that the law should be otherwise. It is the exclusive province of the jury to determine the facts in the case, applying thereto the law as declared to you by the Court in these instructions, and your decision thereon as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore, the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts.

1.

Lawrence E. Slavin, plaintiff in this action, has brought suit against defendants, claiming that there is due to plaintiff from defendants the sum of \$1280.00 as wages for labor performed by plaintiff as a carpenter for defendants in the construction of defendants' hotel over a period of sixteen (16) forty-hour weeks between October 2, 1947, and January 23, 1948, at the special instance and request of the defendants and for the stipulated wage of \$2.00 per hour together with board and lodging. The plaintiff claims in his complaint that no part

of said sum has been paid and that the entire amount is now due and owing to him by defendants.

The defendants in their answer deny that they have ever agreed to pay the plaintiff for any work done by the plaintiff but that plaintiff offered to work and stated that he would so work for his board and room; that the plaintiff did so work at intervals as and when he saw fit, and that his work was that of a voluntary helper without consideration and gratuitous, so far as concerns the payment of wages, and that during said period of time the defendants furnished plaintiff with board and room as agreed and that plaintiff never at any time contended that the defendants owed him anything or even suggested to them that they were indebted to him in any manner until the filing of the complaint in this action.

In his reply to the defendants' answer, the plaintiff denies each and every statement and allegation made by the defendants in their answer which is not in full accord and agreement with the plaintiff's complaint except only defendants' statement that "no price for work was agreed upon" and that plaintiff understood he was "to have going carpenter's wages."

When you retire to consider of your verdict, you will take with you to the jury room the pleadings in this case, consisting of the plaintiff's complaint, the defendants' answer thereto, and plaintiff's reply to the answer, so that you may there read and consider the pleadings and determine the precise claims and averments of the plaintiff and of the defend-

ants as concerns the subject of this action. However, it should be remembered that pleadings are not evidence and you must not consider anything embraced in the pleadings in this case not sustained by the evidence. Pleadings serve the purpose of setting forth the respective claims and contentions of the parties to an action but are not evidence in support of anything contained therein.

2.

In this case, as in all civil cases, the burden is upon the plaintiff to prove his case by a preponderance of the evidence only, and not, as in criminal cases, beyond reasonable doubt. Preponderance of evidence means the greater weight of evidence. If the evidence in your mind is equally balanced as between the plaintiff and defendants, then the verdict should be for the defendants, because the burden is upon the plaintiff to present evidence of greater weight than that in favor of the defendants before plaintiff is entitled to recover.

3.

The issue in this case is a relatively simple one, and that is whether or not the plaintiff and defendants or either of them agreed that plaintiff should work for the defendants in the construction work described in the pleadings and in the testimony and would be compensated by defendants therefor, at going carpenters' wages, no exact amount of compensation having been agreed upon, or whether

plaintiff agreed to work for his board and lodging only.

If such agreement was made as claimed by plaintiff, then the plaintiff is entitled to the compensation agreed upon for his services and as bearing upon that issue, you may take into consideration all testimony relating to compensation paid for similar work under similar conditions.

If you find that the agreement was entered into as claimed by the plaintiff in his complaint as modified by his reply, and that he rendered the services which he claims to have rendered, and that he has not been paid for such services, then your verdict should be for the plaintiff and against the defendants for such amount as you find the plaintiff justly entitled to recover from the defendants for the services so rendered.

But unless the plaintiff has proved the averments of his complaint, as modified by his reply, by a preponderance of the evidence, your verdict should be for the defendants and against the plaintiff, for if you find that the agreement between the parties was to the effect that the plaintiff would work for his board and room only, and that there was no agreement to give him any other compensation, or if in your minds the evidence is equally balanced between plaintiff and defendants on this question, then the plaintiff is not entitled to recover from the defendants in this action and your verdict should be for the defendants and against the plaintiff.

4.

The laws of Alaska provide that all questions of

law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to the Court; and although the jury has the power to find a general verdict, which includes questions of law as well as fact, you are not to attempt to correct by your verdict what you may believe to be errors of law upon the part of the Court.

All questions of fact, other than those heretofore mentioned in these instructions, must be decided by the jury, and all evidence thereon addressed to them. Since the law places upon the Court the duty of deciding what testimony may be admitted in the trial of the case, you should not consider any testimony that may have been offered and rejected by the Court, or admitted and thereafter stricken out by the Court.

You are the sole judges of the credibility of the witnesses. In determining the credit you will give to a witness and the weight and value you will attach to his testimony you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any of the parties to the case; the probability or improbability of the statements of such witness; the opportunity he had to observe and be informed as to matters respecting which he gave evidence before you; and the inclination he evinced, in your

judgment, to speak the truth or otherwise as to matters within his knowledge.

5.

The law makes you, subject to the limitations of these instructions, the sole judges of the effect and value of evidence addressed to you.

However your power of judging the effect of evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against the declarations of witnesses, fewer in number, or against a presumption or other evidence satisfying your minds.

A witness wilfully false in one part of his testimony may be distrusted in others.

Testimony of the oral admissions of a party should be viewed with caution.

Evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

6.

At the close of the trial counsel have the right to argue the case to the jury. The arguments of coun-

sel, based upon study and thought, may be, and usually are, distinctly helpful; however, it should be remembered that arguments of counsel are not evidence and cannot rightly be considered as such. It is your duty to give careful attention to the arguments of counsel, so far as the same are based upon the evidence which you have heard and the proper deductions therefrom and the law as given to you by the Court in these instructions. But arguments of counsel, if they depart from the facts or from the law, should be disregarded. Counsel, although acting in the best of good faith, may be mistaken in their recollection of testimony given during the trial. You are the ones to finally determine what testimony was given in this case, as well as what conclusions of fact should be drawn therefrom.

7.

The law forbids quotient verdicts. A quotient verdict is arrived at by having each juror write the amount of damages or compensation to which he believes the plaintiff is entitled, adding the amounts so set down, and then dividing the total by the number of jurors, usually twelve, the resulting figure being given as the verdict of the jury. Such verdicts are highly improper and under no circumstances should you resort to that method of adjusting differences of opinion among yourselves.

8.

The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

While no juror should yield a sincere conclusion, founded upon the law and the evidence of the case, in order to agree with other jurors, every juror, on considering the case with fellow jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to get at the truth, and with the view of arriving at a just verdict.

No juror should hesitate to change the opinion he has entertained, or even expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors.

9.

While you are not justified in departing from the rules of evidence as stated by the Court, or in disregarding any part of these instructions, or in deciding the case on abstract notions of your own, or in being influenced by anything except the evidence or lack of evidence as to the facts of the case, and instructions of the Court as to the law, and the inferences properly to be drawn from the facts and from the law as applied to the facts, there is nothing to prevent you from applying to the facts of this case the sound common sense and experience in affairs of life which you ordinarily use in your daily transactions and which you would apply to any other subject coming under your consideration and demanding your judgment.

10.

You are to consider these instructions as a whole.

It is impossible to cover the entire case with a single instruction, and it is not your province to select one particular instruction and consider it to the exclusion of the other other instructions.

As you have been heretofore charged, your duty is to determine the facts from the evidence admitted in the case, and to apply to those facts the law as given to you by the Court in those instructions.

During the trial I have not intended to make any comment on the facts or express any opinion in regard thereto. If, by mischance, I have, or if you think I have, it is your duty to disregard that comment or opinion entirely, because the responsibility for the determination of the facts in this case rests upon you, and upon you alone.

11.

When you retire to consider of your verdict, you will elect one of your number foreman who will date and sign the verdict unanimously agreed upon. If you find for the plaintiff and against the defendant you should insert in the verdict which is prepared for that contingency and which is marked Verdict No. 1, the amount which the plaintiff is entitled to recover from the defendant but in no event to exceed the sum of \$1280.00, together with interest thereon at the rate of 6 per cent per annum from January 23, 1948, and your foreman should thereupon date and sign said verdict and you should return the same into Court as your verdict. If you find for the defendants and against the plaintiff, your foreman should date and sign the verdict

which has been prepared for that contingency and which is marked Verdict No. 2, and you should thereupon return the same into Court as your verdict.

With your verdict you will return into Court the pleadings, the exhibits, these instructions and the form of verdict not used by you.

Dated at Anchorage, Alaska, this 9th day of February, 1950.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed: Filed February 9, 1950.]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes Now, Alfred Heady and Esther Heady, Defendants in the above-entitled cause, and moves this Court for an order setting aside the verdict and judgment herein and granting a new trial of the above-entitled cause, for the following reasons, viz:

1. Verdict not supported by the evidence and is contrary to the great weight of the evidence.
2. That the verdict is not supported by any competent evidence and is contrary to the law and the evidence.
3. That the Court erred in admitting evidence

that was not competent offered on behalf of the Plaintiff, and objected to by the Defendants.

4. That the Court erred in sustaining Plaintiff's objections to competent evidence offered by the Defendant.

5. That the Court erred in refusing the Defendants' offer of proof, as shown by the record.

This motion is basd upon all the files and records in said action.

Dated this 17th day of February, 1950.

/s/ J. L. McCARREY, JR.,
Of Attorneys for Defendants.

[Endorsed]: Filed February 17, 1950.

In the District Court for the Territory of Alaska
Third Division

No. Sel.-5707

LAWRENCE E. SLAVIN,

Plaintiff,

vs.

ALFRED HEADY and ESTHER HEADY,
doing business as HEADY HOTEL,
Defendants.

JUDGMENT

The above-entitled action came on regularly for trial on February 8, 1950 before the above-entitled

court at Anchorage, Alaska, the plaintiff, Lawrence E. Slavin, being present in person and represented by Robert J. McNealy and Buell A. Nesbett, his attorneys, and the defendants, Alfred Heady and Esther Heady, being present in court and represented by their attorneys, J. L. McCarrey and Bailey Bell; a Jury of twelve persons was regularly impaneled to try the cause and testimony, both oral and documentary having been introduced and admitted on behalf of the plaintiff and defendants, wherefore the Court instructed the Jury upon the law in the matter, and counsels for the plaintiff and defendants having argued the matter to the Jury and the Jury retired to consider their verdict; and upon stipulation of counsel for parties hereto at the time the Jury retired, the Jury was directed to bring in a sealed verdict in the event agreement had not been reached by 5:00 p.m. on February 9; but the Jury having reached an agreement prior to that time, returned into court and returned their verdict, which upon being unsealed in open court and in the presence of the Jury was found to be a verdict in favor of the plaintiff reading as follows:

“We, the Jury, duly selected, entitled and sworn to try the above-entitled cause do find for the Plaintiff and against the Defendants, and find that the Plaintiff is entitled to recover of and from the Defendants the sum of Twelve Hundred Eighty Dollars and No Cents (\$1280.00), together with interest thereon at the rate of six per cent (6%) from January 23, 1948.

“Dated at Anchorage, Alaska, this 9th day of February, 1950.

H. L. BLISS,
Foreman.”

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is hereby

Ordered, adjudged and decreed, that judgment be and is hereby given in favor of the Plaintiff, Lawrence E. Slavin, in the sum of Twelve Hundred Eighty Dollars and No Cents (\$1280.00) and that the Plaintiff shall have and recover of and from the Defendants, Plaintiff's costs and disbursements in this action incurred to be taxed by the Clerk of the Court in the manner provided by law, and an attorney's fee in the sum of Two Hundred Dollars, (\$200.00).

Dated at Anchorage, Alaska, this 24th day of February, 1950.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered Feb. 24, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Alfred Heady and Esther Heady, a Partnership, doing business as

Heady Hotel, defendants above named, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Final Judgment entered in this action on February 24, 1950.

/s/ J. L. McCARREY, JR,

/s/ BAILEY E. BELL,

Receipt of copy acknowledged.

[Endorsed]: Filed March 17, 1950.

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Know All Men by These Presents:

That we, the undersigned, Alfred Heady and Esther Heady, doing business as Heady Hotel, as Principals, and John B. McLaughlin and Carl Baier of Homer, Alaska, as Sureties, hereby acknowledge ourselves to be indebted and firmly bound to Lawrence E. Slavin, Plaintiff hereinabove named, in the sum of Sixteen Hundred (\$1600.00) Dollars, lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

Signed, sealed and executed by Alfred Heady and Esther Heady, of Homer, Alaska, Principals, this 3rd day of March, 1950, at Homer, Alaska.

Signed, sealed and executed by John B. McLaugh-

lin, one of the sureties at Homer, Alaska, this 3rd day of March, 1950.

Signed, sealed and executed by Carl Baier, one of the sureties at Homer, Alaska, this 3rd day of March, 1950.

The condition of this obligation is such that,

Whereas, Alfred Heady and Esther Heady, doing business as Heady Hotel, are appealing to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered, made, and entered in the above-entitled Court and cause on the 9th day of February, 1950, wherein and whereby it is ordered, adjudged, and decreed that Lawrence E. Slavin, plaintiff above named, have and recover from the defendants, Alfred Heady and Esther Heady, doing business as Heady Hotel, the sum of Twelve Hundred Eighty Dollars and No Cents (\$1280.00), and the further sum of interest thereon at the rate of six per cent (6%) per annum from January 23, 1948, and the further sum of Two Hundred Dollars (\$200.00) as attorney's fees, together with costs.

Now, therefore, if the said Alfred Heady and Esther Heady, doing business as Heady Hotel, shall prosecute its appeal to effect and shall pay the judgment in full, together with costs, interests, and damages for delay, or for any reason, the appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modification of judgment and costs, interests, and damages as the Appellate Court may adjudge and award, then this obligation to be void, otherwise to be and remain in full force

and effect, and to be enforceable against the above-bounden sureties under and in accordance with the provisions of Rule 73 of the Federal Rules of Civil Procedure.

In witness whereof, the parties hereto have hereunto set their hands and seals on the dates hereinabove set forth.

[Seal] /s/ ALFRED HEADY,

[Seal] /s/ ESTHER HEADY,
Principals.

[Seal] /s/ JOHN B. McLAUGHLIN,
Surety.

[Seal] /s/ CARL BAIER,
Surety.

United States of America,
Territory of Alaska—ss.

I, John B. McLaughlin, the undersigned, whose name is subscribed to the foregoing bond as surety, being first duly sworn, depose and say:

That I am a resident of the Third Judicial Division, Territory of Alaska, and that I am not an attorney nor counsellor at law, Clerk of any court, marshal, deputy marshal, or other officer of any court, and that I am worth the sum of Sixteen Hundred (\$1600.00) Dollars over and above all of my just debts and liabilities, exclusive of property exempt from execution.

/s/ JOHN B. McLAUGHLIN.

Subscribed and sworn to before me this 3rd day of March, 1950.

[Seal] /s/ BENJ. O. WALTERS,
Notary Public,
Territory of Alaska.

My commission expires: 12-29-52.

Approved April 10, 1950.

/s/ ANTHONY J. DIMOND,
District Judge.

United States of America,
Territory of Alaska—ss.

I, Carl Baier, the undersigned, whose name is subscribed to the foregoing bond as Surety, being first duly sworn, depose and say:

That I am a resident of the Third Judicial Division, Territory of Alaska, and that I am not an attorney, clerk of the court, marshal, deputy marshal, or other officer of any court, and that I am worth the sum of Sixteen Hundred (\$1600.00) Dollars, over and above all of my just debts and liabilities, exclusive of property exempt from execution.

/s/ CARL BAIER.

Subscribed and sworn to before me this 3rd day of March, 1950.

[Seal] /s/ BENJ. O. WALTERS,
Notary Public,
in and for Alaska.

My Commission Expires 12/29/'52.

[Endorsed]: Filed April 10, 1950.

[Title of District Court and Cause.]

ORDER

The above matter coming on to be heard on the defendant's motion for an extension of time until May 20, and the Court being fully advised in the premises,

It is hereby ordered that the defendants be given an enlargement and extension of time for the filing and docketing of the transcript in the United States Circuit Court of Appeals for the Ninth Circuit until on or before May 20, 1950.

Done in open Court this 28th day of April, 1950.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 29, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME

This matter coming on to be heard on the application of the defendants in the above-entitled cause of action, and for good cause shown,

It is hereby ordered that the time for filing of the appeal in the above-entitled cause is hereby enlarged to, and including June 5, 1950.

Dated May 18, 1950.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered May 18, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED ON

Come now the above-named defendants, Alfred Heady and Esther Heady, doing business as Heady Hotel, in the above-entitled cause and make the following, their statement of points relied on in their appeal, namely:

1. The Court erred in overruling the defendants' objection to the introduction of any evidence at the commencement of the trial.

2. The verdict as rendered was not supported by sufficient evidence, but was directly contrary to the evidence.

3. The verdict as rendered was against the law.

4. The Court erred in allowing incompetent evidence to be introduced on the part of the plaintiff, over the objections of the defendants, as shown by the transcript of the testimony and the Court proceedings.

5. The Court erred in refusing to strike out certain testimony on a motion of the defendants as shown by the transcript filed herein.

6. The Court erred in sustaining the plaintiff's objection to competent testimony offered by the defendants.

7. The Court erred in giving instructions as follows, to wit:

Instruction No. 3, first paragraph:

“The issue in this case is a relatively simple one, and that is whether or not the plaintiff and defendants, or either of them, agreed that plaintiff should work for the defendants in the construction work described in the pleadings and in the testimony and would be compensated by defendants therefor, at going carpenter wages, no exact amount of compensation having been agreed upon, or whether plaintiff agreed to work for his board and lodging only.”

Instruction No. 3, paragraph 2:

“If such agreement was made as claimed by plaintiff, then the plaintiff is entitled to the compensation agreed upon for his services and as bearing upon that issue, you may take into consideration all testimony relating to compensation paid for similar work under similar conditions.”

Instruction No. 3, paragraph 3:

“If you find that the agreement was entered into as claimed by the plaintiff in his complaint as modified by his reply, and that he rendered the services which he claims to have rendered, and that he has not been paid for such services, then your verdict should be for the plaintiff and against the defendants for such amount as you find the plaintiff justly entitled to recover from the defendants for the services so rendered.”

Instruction No. 3, paragraph 4:

“But unless the plaintiff has proved the aver-

ments of his complaint, as modified by his reply, by a preponderance of the evidence, your verdict should be for the defendants and against the plaintiff, for if you find that the agreement between the parties was to the effect that the plaintiff would work for his board and room only, and that there was no agreement to give him any other compensation, or if in your minds the evidence is equally balanced between the plaintiff and defendants on this question, then the plaintiff is not entitled to recover from the defendants in this action and your verdict should be for the defendants and against the plaintiff.”

Instruction No. 7, as follows:

“The law forbids quotient verdicts. A quotient verdict is arrived at by having each juror write the amount of damages or compensation to which he believes the plaintiff is entitled, adding the amount so set down, and then dividing the total by the number of jurors, usually twelve, the resulting figure being given as the verdict of the jury. Such verdicts are highly improper and under no circumstances should you resort to that method of adjusting differences of opinion among yourselves.”

Which instruction were objected to, and were given over defendants’ objections and exception was allowed to the defendants in each instances.

8. The Court erred in not sustaining the defendants’ motion to dismiss the case at the close of the plaintiff’s evidence.

9. The Court erred in overruling the defendants' motion to dismiss at the close of all of the evidence.

10. The Court erred in submitting on a quantum meruit instruction when the action was based upon an exact, explicit contract which was not proven.

11. The Court erred by asking one of the jurors after the case was fully completed, to wit: Robert Claypool, if Bailey E. Bell was not still representing him in unfinished business before the District Court, which provoked a discussion by which it was disclosed that Bailey E. Bell, one of the attorneys for the defendants, was still representing Robert Claypool in a case only partially finished. However, Robert Claypool had never been asked whether or not Bailey E. Bell was representing him in any legal matters, and the Court took it upon itself to raise the question, after all the evidence was in, and the case had been closed. And, at a time there was still two alternate jurors serving, and Mr. Claypool could have been dismissed, if the plaintiff had objected to his serving, but the Court did not excuse him. By allowing a discussion in the presence of the entire jury to be had, in which it was admitted freely that Bailey E. Bell was representing Robert Claypool in an unfinished matter before the same Court, but before a different Judge, which matter had been tried, but not decided, and caused the jurors to misunderstand the effect thereof, which effect was evidenced by the rendering of the unconscionable verdict so rendered, that this matter did influence the jury.

12. Error of the Court in overruling the defendants' motion for a new trial, when it became apparent that the verdict, as rendered, was excessive, unjust, and unsupported by the evidence, and especially in not requiring the plaintiff to file a remittitur, remitting a substantial part of the verdict and judgment, which on its face showed the prejudice of the jury.

13. The Court erred in refusing to give defendants' offered instruction 1.

14. The Court erred in adding the words to instruction 3, in the second line, as follows: "or either of them," over the objection of the defendants' counsel, as stated in the record, because there is no evidence of any agreement referred to only in the presence of both of the defendants.

15. The Court erred in adding to instruction 3, after it had finished reading all the instructions to the jury, the words: "going carpenter wages," as shown by the transcript; by giving this added instruction, the Court inferred at least, "going carpenter wages at Anchorage." This was given over counsel for defendants objection, and at the instance and the request of the attorney for the plaintiff.

16. The Court erred in re-reading a part of the instructions as amended which included the words: "at going carpenter's wages," and the Court further erred in adding an oral statement to the jury as follows: "If such agreement was made as claimed by plaintiff, then the plaintiff is entitled to the compensation agreed upon for his services, and as bear-

ing upon that issue, you may take into consideration all the testimony relating to compensation paid for similar work under similar conditions.

If you find that the agreement was entered into as claimed by the plaintiff in his complaint, as modified by his reply, and that he rendered services which he claims to have rendered, and that he has not been paid for such services, then your verdict should be for the plaintiff and against the defendants for such amount as you find the plaintiff justly entitled to recover from the defendants for the services so rendered." This instruction being given orally at a late moment after the instructions had been read, was unfair to the defendants, and clearly left the impression with the jury that the Trial Judge believed the plaintiff was entitled to recover,

Dated at Anchorage, Alaska, this 17th day of May, 1950.

/s/ BAILEY E. BELL,

/s/ J. L. McCARREY, JR.,

Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed May 18, 1950.

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME
TO PERFECT APPEAL

Come now the above-named defendants, acting by and through one of their attorneys of record, Bailey E. Bell, and move this Honorable Court for an

Order extending the time for filing an appeal of the above-entitled cause in the Circuit Court of Appeals in San Francisco, California, until and including the 10th day of June, 1950, and as grounds for said motion state:

1. That the transcript has been finished and is in the mail, but extra time is needed to insure the fact that the transcript will reach the United States Circuit Court of Appeals in time.

/s/ BAILEY E. BELL,

Of Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed U.S.D.C. June 3, 1950.

[Endorsed]: Filed U.S.C.A. June 6, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME

This matter coming on to be heard on the application of the defendants in the above-entitled cause of action, and for good cause shown,

It is hereby ordered that the time for filing of the appeal in the above-entitled cause is hereby enlarged to and including June 10, 1950.

/s/ ANTHONY J. DIMOND,

District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed June 3, 1950.

In the District Court for the Territory of Alaska
Third Division

No. Sel-5707

LAWRENCE E. SLAVIN,

Plaintiff,

vs.

ALFRED HEADY and ESTHER HEADY,
dba HEADY HOTEL,

Defendants.

Before: The Honorable Anthony J. Dimond,
United States District Judge.

February 8, 1950

Appearances:

For the Plaintiff:

ROBERT J. McNEALY and
BUEL A. NESBETT of
McCUTCHEON & NESBETT.

For the Defendants:

BAILEY E. BELL and
J. L. McCARREY, JR.

Whereupon the Clerk proceeded to draw from the Trial Jury Box, one at a time, the names of the members of the regular panel of Petit Jurors and counsel for both plaintiff and defendants examined and exercised their challenges against said

Jurors, until the Jury was complete. Whereupon said Jury was duly sworn to well and truly try the above-entitled cause and a true verdict render in accordance with the evidence and the instructions of the Court.

Opening statement to the Jury was made by Robert J. McNealy on behalf of plaintiff.

Opening statement to the Jury was made by J. L. McCarrey, Jr., on behalf of defendants.

PROCEEDINGS

LAWRENCE E. SLAVIN

called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-Examination

By Mr. McNealy:

Q. Will you state your full name to the Court and Jury, please? A. Lawrence E. Slavin.

Mr. McCarrey: May I interrupt? I would like to ask that the rule be invoked.

The Court: All persons who expect to testify as witnesses will remain outside the court room and outside the hearing of the court room, and I will ask counsel to see that [*3] none of them come in to be seated. Sometimes witnesses are not advised.

Mr. McNealy: We have no other witnesses, except Mr. Slavin.

The Court: That makes it rather simple in your behalf.

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Testimony of Lawrence E. Slavin.)

Q. (By Mr. McNealy:) What is your home address, Mr. Slavin? A. Homer, Alaska.

Q. How long have you lived in Homer, Alaska?

A. I came there the first time in 1920.

Q. What is your occupation?

A. Carpenter and fisherman.

Q. How long have you been a carpenter?

A. About 20 years.

Q. Are you a member of the Carpenters Union?

A. They have a local started in Homer now.

Q. Have you ever had occasion to work for the defendants in this action, Mr. and Mrs. Heady?

A. I did.

Q. State, if you can, about what date that you went to work for them?

A. I began there on October 2nd, 1947, and worked there until the latter part of January, the 22nd or 23rd.

Q. Do you know how many weeks that was?

A. Six weeks. [4]

The Court: I missed part of the answer. You said you began work——

A. October 2nd.

The Court: Until when?

A. January 23.

Q. (By Mr. McNealy:) Did I understand you correctly that you worked from the 2nd of October until the 23rd of January? A. Yes.

Q. That is more than six weeks?

A. It may be more than six weeks.

(Testimony of Lawrence E. Slavin.)

Q. Did you, or did you not allege in your complaint that you worked sixteen weeks?

A. Well, yes, it is sixteen weeks.

Q. How many hours a week did you work?

A. Forty hours.

Q. What, if anything, did you do for the defendants, Mr. and Mrs. Heady?

A. Well, the second day I worked there I started putting in doors and windows in the hotel. It was just a shell of a building when I started, and I continued on with the sub-floors, stairways and continued on through the building until that time when I left them.

Q. You put in doors and windows and stairways?

A. Yes [5]

Q. What did they pay you for the sixteen weeks work at forty hours per week?

Mr. Bell: I object to the question. It is not based upon the prior evidence and assuming something not in evidence.

The Court: Overruled.

Mr. Bell: Exception.

Q. (By Mr. McNealy): What did they pay you for the sixteen weeks work at forty hours per week?

A. All I received at that time was my board.

Q. In the answer of the defendants they have alleged that they furnished you board and room?

A. No, I roomed with another fellow in his cabin.

Q. You roomed with another fellow?

A. Yes, in his cabin.

(Testimony of Lawrence E. Slavin.)

Q. They did furnish you with board?

A. Yes.

Q. Prior to the time you went to work for the Headys for whom did you work?

A. Squeaky Anderson of the Seldovia Alaska Packers,

Q. Is that a cannery? A. Yes.

Q. In what capacity did you work for Squeaky?

A. As a carpenter. [6]

Q. You have stated, I believe, that you have twenty years experience as a carpenter?

A. Yes, sir.

Q. How much per hour, if you remember, did Squeaky Anderson pay you?

Mr. Bell: Object as incompetent, irrevelant and immaterial. This is not on a suit quantum meriut, but on a direct contract, so pleaded.

The Court: That is the way it was pleaded in the complaint. The reply may——

Mr. McNealy: Your Honor, in the reply we did state that there was no actual price agreed upon. It was an error on my part in drawing the complaint in stating that there was a stipulated amount.

The Court: What is the purpose of this question, to prove the going carpenters wages?

Mr. McNealy: Yes.

Mr. Bell: That wasn't the question.

The Court: The objection is overruled.

Q. (By Mr. McNealy): Go ahead and answer the question.

(Testimony of Lawrence E. Slavin.)

A. Squeaky paid me two dollars an hour and board and room.

Q. Was that the going carpenters wage at that time?

A. I believe that was the cannery wage at that time.

Mr. Bell: Your Honor, I move to strike the answer as [7] not responsive to the question, and further that it is outside the pleadings and not within the issues.

The Court: Motion is denied.

Q. Where did you perform this work for Squeaky Anderson?

A. There at the cannery in Seldovia.

Q. Seldovia, Alaska? A. Yes.

Q. How far is Seldovia from Homer, Alaska?

A. Approximately sixteen miles.

Q. Just across the bay?

A. Just across the bay.

Q. Just across the bay there? A. Yes.

Q. When you went to work for Mr. and Mrs. Heady did you expect to get paid?

Mr. Bell: I didn't catch that question.

The Court: Will the reporter read the question, please.

(The reporter reads the question.)

Mr. Bell: I object as calling for a conclusion.

The Court: The objection is sustained.

Q. Were you paid? A. No.

Q. Now, Mr. Slavin, you have stated that you worked for the Headys on the hotel. Will you ex-

(Testimony of Lawrence E. Slavin.)

plain to the Court and to the Jury all the circumstances surrounding your employment with [8] the Headys between the dates of October 2nd and January 23rd?

A. Well, I came to Homer the 2nd of October. Tommy was working in the hotel, and I said to Tommy, "Give me a hammer and I will help you."

The Court: Who was that?

A. Tommy Wickland. He was working with Al at that time, so I proceeded to help him that afternoon and evening. I told them that evening at supper I could help them for a few days. The next day they gave me the windows and doors to hang. I proceeded with that. At the time they were working on a water system and hauling coal. The second day I was there Al told me at that time he couldn't see his way clear then to pay me wages, but he was keeping track of the time and he would pay me at some time later. So on the strength of that I sent and got my tools. From then on I was just working at the windows and doors the sub-flooring and one thing or other for a period of about six weeks, and I worked along in the building, got it enclosed for cold weather. That is the way it carried on until the latter part of January.

Q. Your carpenter tools were at Seldovia?

A. Yes, I had left them there on the dock to ship outside.

Q. Explain, if you can, how you got them over, and who paid for the transportation.

A. I sent a wire to Steve Stowzowski—[9]

(Testimony of Lawrence E. Slavin.)

The Reporter: Can you spell that last name, please?

The Witness: Zow—No, I'm afraid I can't.

Mr. McNealy: I believe I can, if Your Honor will permit.

The Court: Counsel may be permitted.

Mr. McNealy: S-t-o-w-z-o-w-s-k-i.

A. I wired him to bring my tools over, and he brought them on the next trip. I paid him for them, and proceeded to go to work.

Q. Explain, if you can, why you had your tools shipped from Seldovia over to Homer?

A. As I stated, on the strength of Al's statement that he needed someone and said he couldn't pay me then, but he was keeping track of the time and at a later date he would reimburse me, so that is the reason I sent for the tools.

Q. Has he paid you to this date?

A. No, he hasn't.

Q. He hasn't? A. No.

Q. Has he paid you any part of it?

A. No.

Q. Who did the skilled work on the hotel?

A. I believe I did up until the time I left.

Q. What did this skilled work consist of.

A. Hanging the doors and windows and other finish jobs and stairways. There are a couple of spiral stairways, or stairs [10] built on a turn, and stairs down in the basement.

Q. I hand you this and ask if you know what it

(Testimony of Lawrence E. Slavin.)

is? A. Yes, that is the Heady Hotel.

Q. Is that a true representation of it?

A. Yes, it is of the hotel.

Mr. McNealy: I offer this picture in evidence.

Mr. McCarrey: No objection.

The Court: Without objection it may be admitted in evidence, marked Plaintiff's Exhibit No. 1.

Q. Mr. Slavin, I believe you stated that Mr. Heady and Tommy were putting in water lines.

A. Yes.

Q. What were you doing during that time?

A. Putting in doors and windows and laying sub-flooring.

Q. What time of the year was that?

A. In October, right after I started working.

Q. By your work for the defendants, Mr. and Mrs. Heady, did they get into the hotel any sooner than they would otherwise?

Mr. Bell: Objection, calling for a conclusion of the witness.

The Court: Overruled.

Q. Did they, by reason of your work, get into the hotel sooner than they would otherwise?

A. Yes. [11]

Q. How much sooner, if you know?

A. I couldn't say definitely, but three or four months no doubt.

Q. I am going to hand you Plaintiff's Exhibit No. 1, being the representation of the outside of the Heady Hotel, and ask if you can describe to the

(Testimony of Lawrence E. Slavin.)

jury any of the work that you performed there.

A. Well, it was installation——

Q. And to the Court.

The Court: Hold it up to the jury. The jury passes on this question.

A. The installation of the windows. There are fifty-four double sash windows, and a couple of single sash. I think there is 4 - 6 - 8—there is 10 outside doors and the chimneys. I made and set the frames for all the chimneys. I believe that takes in all that is visible on the outside that I did.

Q. What work did you do inside the hotel?

A. The biggest part of both sub-floors and the stairways and finishing up their living quarters in the back end and started on upstairs then to finish up the rooms.

Q. According to your statement how much do the defendants, Mr. and Mrs. Heady owe you?

A. I figure twelve hundred and eighty dollars.

Mr. McNealy: Your witness.

The Court: Counsel for defendants may examine.

Cross-Examination

By Mr. Bell:

Q. When was it that you worked for Squeaky Anderson?

A. That was the fall of forty seven just prior to the time I came to Homer.

Q. How long did you work for Mr. Anderson?

A. I believe it was around five or six weeks.

(Testimony of Lawrence E. Slavin.)

Q. You say you drew regular cannery wages?

A. I don't definitely know that was cannery wages. That is what he said he could get me.

Q. Did he have you repairing buildings?

A. No construction.

Q. Who else was working besides you.

A. George Gar was there. He had been a carpenter with Squeaky all summer, and a man by the name of Johnny Munson.

Q. Did you ever do any fishing? A. Yes.

Q. Do any fishing for Squeaky? A. Yes.

Q. Where had you worked as a carpenter before you worked for Squeaky?

A. I had worked for Squeaky that spring.

Q. Had you done any other carpenter work in Alaska?

A. Oh, yes, out here on the Post from forty to forty-three, [12] I believe.

Q. How many hours a day did you work out here on the Post?

A. I believe sometimes working ten hours.

Q. Down there when you came to see him, to see Mr. Heady was it October 2nd, you think?

A. It were October 2nd.

Q. How did you come to Homer?

A. I believe I came on the mail boat.

Q. Where were you intending to go?

A. I planned on being around Homer to get some surveying done and then——

Q. What was that? A. A homestead.

Q. A homestead? A. Yes, a homestead.

(Testimony of Lawrence E. Slavin.)

Q. Your homestead? A. My father's.

Q. You intended to stay around Homer while this surveying was being done?

A. I figured on that.

Q. Did you have a house there on the homestead?

A. There was a house on the homestead, but there was a family living there.

Q. A man and his family living there?

A. Yes, at that time there was a man and his family staying [13] there.

Q. You knew Al, Mr. Heady? A. I did.

Q. You knew that Al was trying to build a log building there for a hotel? A. Yes.

Q. Did he have the roof on it? A. Yes.

Q. Did you know this gentleman, Tommy Wickland, before that time? A. Yes.

Q. He was a carpenter?

A. Yes, he worked at the base here.

Q. When you first went to Tommy on October 2nd was Mr. Heady there? A. No, he wasn't.

Q. You said to Tommy give me a hammer and I will help you out? A. Yes.

Q. And he got you a hammer? A. Yes.

Q. And you helped him out? A. Yes.

Q. About what time of day was it that you got there? A. About 2 o'clock. [14]

Q. Had you come from Seldovia that day?

A. Yes.

Q. Had you intended to stay in Homer?

A. For awhile, yes.

(Testimony of Lawrence E. Slavin.)

Q. You worked on there until it got dark?

A. About 5 o'clock.

Q. The sun did set at about 2:50 at that time of the year? A. I don't remember.

Q. Did you work until it was too dark to work inside? A. I can't recall.

Q. It was pretty cold? A. Not that day.

Q. It was about that time?

A. It was beginning to get cold.

Q. Where did you eat your evening meal?

A. At the Headys'.

Q. Did you have any talk with them that evening? A. Yes, we talked that evening.

Q. What did you talk about?

A. Sundry things, everything I suppose. All the gossip in town came up.

Q. You were friends of the Headys?

A. Yes.

Q. Did you tell Mr. and Mrs. Heady you were going outside? A. I believe so. [15]

Q. And I believe you said you had to hang around until you could get some surveying done?

A. I guess so.

Q. I believe you said Mr. Heady told you he had no money to pay you with that he and Tommy were just building it themselves?

A. I believe so.

Q. You did know that Mr. Heady had no cash to put into it? A. At that time, yes.

Q. Did Mr. Heady say anything about how much he would pay you?

(Testimony of Lawrence E. Slavin.)

A. He said he was keeping track of the time and he would reimburse me and I supposed that would be all I had coming.

Q. He didn't say anything about price?

A. No.

Q. Did you say anything to him that night to the effect that if he would furnish you with a place to stay and room and board or food until you were ready to go out that you would be glad to help him?

A. I told him I would be glad to give him a few days work.

Q. Those first few weeks you didn't intend to charge him?

A. I didn't think there was any charge.

Q. You said on your direct examination that a couple of weeks later you sent a wire over and got your tools sent over. [16]

Mr. Nesbett: Objected to——

Mr. Bell: It is——

Mr. Nesbett: Just a moment please.

The Court: Sustained.

Q. Did you testify that about two weeks later you sent for your tools?

A. No.

Q. When did you?

A. I came over on the mail boat if I remember rightly on Monday or Tuesday, and I believe that Friday was the last date of this mail boat, and I had the tools come on that boat.

Q. You think you had them come down on Friday following the day you landed there?

(Testimony of Lawrence E. Slavin.)

A. Yes.

Q. And if it shows that you landed there on Thursday you still think you had them come over on Friday?

A. It would be impossible for me to do it. It would be the following mail boat that I came over on and there are two trips a week.

Q. Where were you going outside?

A. Well, I don't know as—I generally visit around Seattle and then go over in the country where I was born and raised and Lord knows where I would have gone to.

Q. You are a single man?

Q. Never been married? [17] A. No.

Q. Did you live on your father's homestead a good long time? A. Yes.

Q. How long? A. Ten years.

Q. How far is that from Homer?

A. About two and a half miles East of the Heady Hotel.

Q. Did you finally go outside? A. Yes.

Q. When did you go?

A. I believe it was the 5th of February.

Q. How did you go? A. I flew out.

Q. Did you stay with the Headys until you went outside?

A. I boarded there. I was staying with Tommy Wickland.

Q. Who furnished the beds?

A. I furnished my own bedding.

Q. You had sheets?

(Testimony of Lawrence E. Slavin.)

A. My own bedding—my own sheet blankets.

Q. Who furnished the bed?

A. I believe the Headys. That was at Tommy Wickland's.

Q. How far was Tommy's place from where the Headys lived? A. Oh, probably 300 yards.

Q. And you stayed over at Tommy Wickland's and you had your meals at the Headys' place? [18]

A. Yes.

Q. Who did your laundry?

A. Every bit of laundry I had I did it myself.

Q. You are sure Mrs. Heady didn't do it?

A. I believe it was just before Christmas she said she would be glad to do my laundry. It was a kind of shack and drying conditions weren't good.

Q. After you got to the hotel she did do it for you? A. We did it together.

Q. Sometimes you would help her with the laundry? A. Yes.

Q. Did you help her with other household work?

A. No.

Q. That was the only house work?

A. I believe so.

Q. You did help them with the car—the truck?

A. Yes.

Q. Some days it was too bad to work?

A. No, I was inside working and enclosing the building.

Q. Did you ever use the truck for your own uses? A. Yes, maybe half a dozen times.

Q. You did have the engineer survey your place?

(Testimony of Lawrence E. Slavin.)

A. Yes, I think we was out there a day or day and a half.

Q. Did you stay at the home property at that time? A. No. [19]

Q. You drove back and forth? A. Yes.

Q. You drove Mr. Heady's truck for that?

A. I believe I used it.

Q. Did you do any hauling otherwise with his truck?

A. I don't recall doing any hauling only there was one time I went to the dock to pick up some oil. At that time Heady had about four drums of oil himself, oil I had bought in Seldovia at one time and brought back.

Q. For whom?

A. For Heady and for myself.

Q. What did you do with that oil?

A. It set there by the hotel until last fall and I went and got it.

Q. That was outside by the hotel? A. Yes.

Q. The Heady Hotel? A. Yes.

Q. Did Mr. Heady say to you this, or this in substance, "I don't need you very bad that Mr. Tommy Wickland and I are going to have to build it because we don't have any money to pay for it"?

A. No.

Q. Tommy Wickland was capable of building it?

A. No, I don't think so according to his own statement. [20]

Q. Tommy did go ahead and finish up the hotel after you left? A. Yes.

(Testimony of Lawrence E. Slavin.)

Q. He put the window and door casings in?

A. Yes.

Q. And the baseboards down? A. Yes.

Q. Didn't you tell Mrs. Heady—I withdraw that.
Did you work during Christmas week?

A. Yes, I believe we did.

Q. Stop just a minute.

A. I would say yes.

Q. Did you work Christmas day? A. No.

Q. Did you work New Years day? A. No.

Q. Did you work the second week in January?

A. I suppose I did.

Q. You just don't remember?

A. I was working practically all the time I was there.

Q. Were you there at Thanksgiving?

A. Yes.

Q. Did you work Thanksgiving day?

A. No.

Q. You had Thanksgiving dinner at the Heady place, didn't you? [21]

A. I tell you I don't recall that. There was one holiday we went over to Carl Byers and I forget, but I think that was Christmas.

Q. You and the Headys were very close friends, weren't you? A. Yes, we were.

Q. What hour in the morning did you ordinarily go to work? A. To begin with at 8 o'clock.

Q. As the time went on did you change that point of going to work to a later hour?

A. To begin with we got in just about a full

(Testimony of Lawrence E. Slavin.)

day, but later on after we got it enclosed we went to work a little later and in time we got gas lanterns and worked until quite late in the evenings, some evenings especially before they moved in. They were in a hurry to get moved in because of conditions down there where they was.

Q. How long a period of time did you do that with the gas lanterns in the evening?

A. Didn't do it steady at all, but off and on.

Q. That was on the stairway? A. Yes.

Q. Did you tell Mrs. Heady this, or this in substance, that you would like to build that stairway that you had always wanted to? A. Yes.

Q. You wanted to build it a certain way that you had in mind? [22] A. Yes.

Q. And she said alright?

A. I don't believe it was Mrs. Heady. I believe it was Al, we always talked things over with.

Q. He said go ahead

A. Yes. He turned it over to me. He always seemed satisfied to.

Q. He always let you do it just as you wanted to? A. Yes.

Q. Isn't Mr. Heady a carpenter?

A. I wouldn't say a first class carpenter. He has done carpenter work.

Q. Did he work as a carpenter out at the Base with you? A. On form work, yes?

Q. Were you doing form work too?

A. Yes.

(Testimony of Lawrence E. Slavin.)

Q. Have you ever been a member of the Carpenters Union? A. Yes.

Q. When?

A. I don't remember when I joined. It was some years back, and I was until the fall of forty-seven at the time I was working with Mr. Heady. I was a member in good standing up to that time.

Q. What did you make out on the Post an hour when you were working out here? [23]

A. I believe it was a dollar and a half an hour.

Q. Did that include room and board, or did you pay for that? A. No, it did not.

Q. Down at Homer during the winter of forty-seven and the spring of forty-eight things were pretty high, weren't they?

A. I don't recall. I don't believe they were as high as they are now.

Q. Food was high and hard to get, wasn't it?

A. I don't know that it was.

Q. What would an ordinary dinner at six or seven o'clock at the restaurant they had at that time cost you?

A. I don't recall what it was.

Q. Would it be around two dollars?

A. I don't believe it would be that high.

Q. What about the noon day meal—at noon what would that cost you?

A. It would depend on what a person would eat.

Q. Can be from a dollar to five dollars?

A. Yes.

(Testimony of Lawrence E. Slavin.)

Q. And breakfast—do you remember what ham and eggs would cost?

A. I suppose a dollar or a dollar and a quarter, perhaps a dollar and a half.

Q. Would you say your board would cost you on an average of a dollar and a half a meal? [24]

A. No.

Q. You think it would cost a little less than that?

A. I think so.

The Court: Is there any objection to coming back at 1:30 this afternoon?

(No response.)

The Court: The trial will be continued to 1:30 and remember if anyone is late, of course, no business can be done until the absent person arrives. Oh, yes, before you go, it is my duty to instruct you, as you know. I think the law uses the word admonish. I admonish you that you must not discuss the case among yourselves, or with others, and you must not form or express an opinion until it is finally submitted to you. I don't like to repeat this every time we separate, but the law says it is my duty and so I must perform my duty in that regard. The Court will stand in recess until 1:30.

Afternoon Session

The Court: The Clerk may call the roll of the jury.

(Jurors names were called and responded to.)

The Clerk: Jury in the box, all present, your Honor.

The Court: Mr. Slavin may resume the stand and counsel may resume his examination.

LAWRENCE E. SLAVIN

plaintiff, previously called as a witness on behalf of said plaintiff [25] resumed the stand and testified as follows:

Cross-Examination

By Mr. Bell:

Q. How long did you work on the stairways?

A. That would be a hard thing to say definitely.

Q. Could you give us a good idea?

A. I believe there was other work came in at different times that it wasn't steady all the time.

Q. Did you work steady every day, or some days you didn't on account of material?

A. Very nearly every day and some Saturdays and Sundays.

Q. How come you only told the jury under your own counsel's examination that you worked an average of forty hours a week?

A. I thought that was fair enough to balance that up very easily.

Q. Some weeks then you worked more than forty hours?

A. Yes.

Q. And some less?

A. I don't believe so.

Q. You had your ground surveyed out in the country during that time?

A. Yes.

Q. Were you out there some time when you were having that survey.

(Testimony of Lawrence E. Slavin.)

A. About a day and a half. [26]

Q. Did you work forty hours between Christmas and New Years? A. I couldn't say definitely.

Q. Sometimes you worked pretty steady, and sometimes you didn't?

A. I worked fairly steady all the time.

Q. The days were quite short? A. Yes.

Q. When did you first get the gasoline lantern you spoke about?

A. Practically right after we got the building enclosed.

Q. In January? A. No.

Q. December?

A. No, I would say November.

Q. Working inside there would only be a very small part of a winters day that you could see to work without artificial light?

A. That's right.

Q. Those lanterns—how many did you have?

A. Sometimes one, sometimes three.

Q. Did Mr. Heady work there too?

A. He was around too.

Q. This other gentleman—Tommy Wickland—he worked too, didn't he?

A. He never made it a practice of working [27] evenings.

Q. You didn't except on the stairway?

A. Yes, on the living quarters in order to rush through.

Q. When was about the last day you worked according to your best memory?

(Testimony of Lawrence E. Slavin.)

A. I would say about the last day of January, 1948, was the last day I really worked.

Q. The last day of January, 1948?

A. Yes.

Q. Why did you allege in your complaint that you didn't work beyond the 23rd of January?

A. I don't believe I alleged that.

Mr. Bell: May I see the original complaint. I want the original:

(The Clerk hands the original court file to Mr. Bell.)

Q. (By Mr. Bell): Mr. Slavin, look at that instrument there and see if that is your signature over on the second page? A. Yes, it is.

Q. Did you read that before you signed it?

A. I apparently did.

Q. You thought it was true at that time?

A. Yes.

Q. You swore to it? A. Yes.

Q. I will ask you to look in that and see [28] what day you allege in there you worked last?

A. I believe it was the 23rd. Just a moment, please. Yes.

Q. That is what you allege there?

A. Yes.

Q. You would be more familiar with the facts then than you are now? A. Apparently.

Q. When did you first employ Mr. McNealy, Attorney at Law, at Homer about this case?

A. He was at Seldovia.

(Testimony of Lawrence E. Slavin.)

Q. Well, when did you first employ him?

A. Sometime the latter part of June.

Q. What year?

A. This year. That was last year.

Q. Forty-nine? A. Yes.

Q. You were outside in January of 48?

A. February 5th, I believe.

Q. You stayed with the Headys until you went outside, didn't you? A. Yes.

Q. And you stayed at the same place and had the same bed that you had? A. Yes.

Q. They furnished your board? [29]

A. Yes.

Q. Did you ever move in the hotel with them?

A. In the spring after I came back from the outside.

Q. Did you pay them for your accommodations then?

A. I don't believe there was anything asked for that. They put up a couple of cots and we furnished our own mattresses.

Q. Who stayed there besides you?

A. My nephew.

Q. How long did you stay?

A. The first night I arrived I stayed with Tommy Wickland and would have continued staying with Tommy only Al told me a story about Tommy and invited me over there.

Q. He invited you? A. Yes.

Q. And your nephew came over with you?

(Testimony of Lawrence E. Slavin.)

A. Yes.

Q. How long did you stay?

A. I couldn't say exactly. I don't know just when we left to go fishing, sometime in May, I believe.

Q. And he never charged you anything for board?

A. No, he said Tommy Wickland didn't want me to stay at his place, and that is why he invited me over there.

Q. Did you ever talk to Tommy about it?

A. Yes.

Q. But you didn't at the time? [30]

A. No. It was just a story told me, and I couldn't see how I could go out and ask for any enmity.

Q. You were welcome at the hotel?

A. Yes.

Q. And you weren't there?

A. I found out later I was welcome at Tommy's.

Q. Now, I believe you stated in your complaint, in Paragraph II, "That on or about the 23rd day of January, 1948, this plaintiff and the said defendants talked together concerning the said work and skilled labor and the wages due therefor, but the defendants became evasive as to payment, first agreeing to transfer a certain sawmill by bill of sale to plaintiff, which they failed and neglected to do, and later agreeing to reimburse plaintiff either in cash or in kind for his skilled labor." Did you tell Mr. McNealy that?

(Testimony of Lawrence E. Slavin.)

A. I don't know where he would have gotten it if I hadn't told him.

Q. You did tell him? A. Yes.

Q. The day you swore to this was the 6th day of September, 1949. Did you understand that you swore to that at that time?

A. I take it that I did.

Q. I will ask you this—if you told him this, “That plaintiff worked as a carpenter for the defendants in the construction of defendants’ hotel over a period of sixteen forty [31] hour weeks from the second day of October, 1947, to the 23rd day of January, 1948, inclusive, at the special instance and request of the said defendants, and for the stipulated wage of two dollars per hour for each and every hour so worked by plaintiff”? Did you tell your attorney that?

A. There was something came up about the wages. I told him that was what I had been getting for prior work.

Q. At the special instance and request of the defendants and for the stipulated wage of two dollars per hour?

A. Is that all of that paragraph?

Q. Did you tell him that?

A. Is that what it is?

Mr. Bell: I was just reading it.

(Mr. Bell hands complaint to witness.)

The Witness: It was there, yes.

(Testimony of Lawrence E. Slavin.)

By Mr. Bell:

Q. You told Mr. McNealy that there was a stipulated amount of two dollars per hour to be paid you? A. That is what I asked.

Q. You told him that? A. Yes.

Q. Why did you tell the jury this morning that there was no stipulated amount, that you thought you were to get ordinary carpenters' wages?

A. That is what was mentioned. It didn't come out in just [32] those words, but he said he would pay me the going wage.

Q. Who said that?

A. That is what Al told me when we made the agreement prior to this.

Q. Prior to what?

A. The 23rd of January.

Q. That is the day you say you quit?

A. I didn't say I quit. That is all I am asking for. I stayed around there and worked around.

Q. You stayed around until sometime in February? A. Yes.

Q. They gave you board and room?

A. Yes.

Q. There wasn't any agreement for \$2 an hour?

A. I understood that if he was going to pay me wages that it would be at the going wage scale.

Q. You didn't have an agreement with Al as to \$2 per hour and there wasn't any statement about \$2 per hour?

A. I believe something came up, because he

(Testimony of Lawrence E. Slavin.)

asked what I was getting from Squeaky in Seldovia.

Q. That came up? A. I believe it did.

Q. Why did you tell the jury this morning that nothing like that took place?

A. You brought it to mind. [33]

Q. You had forgotten until you read this complaint? A. I don't recall.

Q. Did you read the reply that was filed in this case? A. Yes, I read it.

By the Reporter: Will you speak up, please.

The Court: Yes, please speak a little louder, so the jury can hear you.

The Witness: I will try to speak a little louder.

Q. You read that when you signed it, didn't you?

A. I don't know as I seen this when I signed the other.

Q. This is dated later—October 19th. You signed that, didn't you? A. This here?

Q. Yes. A. Where did I sign this?

Mr. McNealy: I object—

Mr. Bell: It is sworn to by Mr. McNealy.

Q. (By Mr. Bell): You say you saw this?

A. I suppose I read it over. I don't definitely remember it.

Q. Do you remember reading the answer that Mr. and Mrs. Heady filed in the case?

A. Yes, I believe so.

Q. You read that over? A. Yes. [34]

Q. Then after that this was filed in the case?

A. I don't remember seeing that.

(Testimony of Lawrence E. Slavin.)

Q. Here it says this, "Plaintiff denies each and every statement and allegation made by the defendants in this answer which is not in full accord and agreement with plaintiff's complaint, except only defendants' statement that 'no price for work was agreed upon' and in that plaintiff understood he was to have going carpenters' wages." Was Mr. McNealy authorized to make that statement for you? A. What do you mean?

Q. This part "no price for work was agreed upon" and in that plaintiff understood he was to have going carpenters' wages?

A. There had been talk of amounts.

Q. Did you tell Mr. McNealy you authorized him to file it that way?

A. I don't remember seeing that one before.

Q. Where were you in October of 1949?

A. I guess I was in Homer.

Q. And did you still live at Seldovia?

A. No.

Q. You lived up at Homer? A. Yes.

Q. Homer had been your home all the time?

A. Yes.

Q. You know how Mr. McNealy received the information to this [35] effect, "Plaintiff denies each and every statement and allegation made by the defendants in their answer which is not in full accord and agreement with plaintiff's complaint, except only defendants' statement that 'no price for work was agreed upon' and in that plaintiff understood he was to have going carpenters'

(Testimony of Lawrence E. Slavin.)

wages''? Now, which is true, were you to have going carpenters' wages, or were you to have a specified amount of \$2 per hour?

A. I don't believe it ever came to any definite amount. I don't remember.

Q. You don't remember having an agreement with Mr. Heady?

A. Prior to January 23rd there was other negotiations under way, and I don't believe there was anything of that kind.

The Court: The 23rd of what?

The Witness: January.

Q. I believe you testified awhile ago you had a specific agreement on the 2nd of October with Mr. Heady that you would be paid \$2 per hour. I withdraw that. Were you shown the complaint, and did you read it?

A. You showed it to me awhile ago.

Q. Did you testify to this, or that this in substance is true that plaintiff worked as a carpenter for the defendants in the construction of defendants' hotel over a period of sixteen forty-hour weeks from the 2nd day of October, 1947, to the 23rd day of January, 1948, inclusive, at the special instance [36] and request of the said defendants, and for the stipulated wage of two dollars per hour for each and every hour so worked by plaintiff? Now, was there any such agreement as that?

A. As far as work I was asked to do the work.

Q. Was there any such agreement as you al-

(Testimony of Lawrence E. Slavin.)

leged? A. Yes, it was pretty near the——

Q. Did Mr. Heady tell you that he would give you \$2 per hour for each and every hour you worked?

A. That is what I was led to understand.

Q. Was ever the words \$2 per hour mentioned?

Mr. Nesbett: I object——

A. Yes.

Mr. Nesbett: ——it is leading.

Mr. Bell: The witness answered.

A. Yes. I told him what I was getting at Squeaky Anderson's before I came there.

Q. Do you remember this being in your complaint, "and in addition to the said two dollars per hour, plaintiff was to receive board and lodging from defendants, which board was provided——

A. The board was provided.

Q. You knew that they made arrangements and furnished the bed for you to sleep on?

A. They furnished the bed, but not the linen. I furnished my own sheet blankets. [37]

Q. When was this agreement that you referred to entered into? That is that he was to give you \$2 per hour over and above board and room?

A. I couldn't say when.

Q. Was it in October, November, December, or January?

A. It was brought up during the time I were there.

Q. You also notice that this complaint says,

(Testimony of Lawrence E. Slavin.)

“plaintiff was to receive board and lodging from the defendants, which board was provided by the defendants.” You read that before you signed it?

A. Yes, if my signature is there I must have read it.

Q. On the 23rd day of January, 1948, did you have a conversation with Mr. and Mrs. Heady?

A. I wouldn't say as to Mrs. Heady.

Q. Did you with Mr. Heady?

A. Mr. Heady and me spoke every day.

Q. Did you have any agreement on the 23rd day of January about salary, or how you were to be paid?

A. At that time I presume——

Q. Not what you presumed. Did you have any conversation about salary that day?

A. That might have been the day we talked about it. We were comparing the sawmill with this work.

Q. What about the sawmill? Were you given a sawmill?

A. No. [38]

Q. Mr. Heady did give you a one-half interest in a sawmill?

A. No, I never did receive it, so how could he give it to me?

Q. Didn't you and Tommy Wickland own a sawmill?

A. No.

Q. Guy Waddel, I mean?

A. No.

Q. You did work out there?

A. Yes.

Q. You were outside and bought parts and sent them back?

A. Sent them back, yes.

(Testimony of Lawrence E. Slavin.)

Q. When you came back you and your nephew went out to the sawmill? A. Yes.

Q. How long did you work at the sawmill?

A. At that time and in June I probably put in close to three weeks.

Q. Who sent you out there?

A. I thought the deal would go through, but it didn't.

Q. I will ask you if you remember you and Mr. Heady having this conversation, or this in substance, after you had finished, or before you went away, Mr. Heady told you that he and this other gentleman had bought a sawmill and had been running it, and Mr. Heady had no further use for it?

A. Not in those words. [39]

Q. Similar to that.

A. If I can tell you what came up prior to this time.

Q. All right, you tell it your way.

A. Mr. Heady and Guy Waddel had a sawmill. I was interested in it and they wanted to sell it for two thousand dollars. One day Al and Guy was through and Al came to me and said he would give me that sawmill, but I couldn't take possession of the mill until the rest of his logs were sawed up. That was as the agreement stood, and on the strength of that agreement I bought parts for it. On coming back things didn't look right, and it appeared to me they was ruining the motor. Al couldn't produce the bill of sale for the sawmill,

(Testimony of Lawrence E. Slavin.)

and I told him I didn't want anything more to do with it.

Q. Did you ever ask Al for a bill of sale?

A. Yes.

Q. Where did you ask him?

A. I believe the last time anything came up about the bill of sale came up out in front of the hotel.

Q. Who was present? A. Just Al and me.

Q. What was said?

A. I told him I wouldn't have anything more to do with it. They was ruining the motor. I went fishing in July. When I came back, I would say about the 8th or 10th of August—two days later Al Heady left for the outside. He was gone some two months.

Q. Why, do you know?

A. For his health. On coming back some two months later I had a chance to meet him in front of the hotel, and we talked there. He says, "I hear Guy sold the sawmill." I said, "Yes, where does that leave me," or something to that effect. He said, "I can't do anything." I said Al I never got any bill of sale, and he said I can't produce a bill of sale, he never had one either and he considered me paid off for my work and he wasn't going to do anything more about it. I said I didn't consider it that way, and that is where the bill of sale business came up.

Q. While you had possession of the sawmill and

(Testimony of Lawrence E. Slavin.)

working on it was this other man out there with you? A. Part of the time.

Q. Did you run the sawmill some?

A. Yes, we sawed out several thousand feet of lumber before things came up to a head and I got out from under.

Q. What came to a head?

A. I told them they were ruining the motor and I didn't feel I could take over a sawmill with a ruined motor. It would cost me several hundred dollars, and Guy Waddel said he wouldn't put another dime into the sawmill, and I didn't think it left me in a very good position.

Q. Then the trouble came up between you and Guy Waddel? [41] A. No.

Q. Mr. Heady wasn't out there?

A. Yes, at the last. At first, while we were bucking logs, Al was up at Caribou Lake on a fishing trip. He had been up there some two weeks, and Guy wouldn't do anything about sawing the logs until Al came back. He knew at the time that the mill wasn't mine until the logs was sawed up. Then it came up about this motor, and I told Guy one day that the oil pressure was down, and he said his Plymouth did the same thing, that it was all right. Then one day they was throwing oil out of the front mains. I remarked about that to them, and Al said it was just an oil seal that was gone, so I figured that if he could produce the bill of sale I would get nothing but a wreck anyway.

Q. Didn't you in the presence of Mr. Heady and

(Testimony of Lawrence E. Slavin.)

four other persons have this conversation with Mr. Heady about the sawmill, Al said I will give you a bill of sale to my half interest as soon as we can get one fixed up, and you said I have four witnesses, I guess I am all right?

A. Never. Al claimed he didn't have a bill of sale.

Q. He said he didn't get one when he bought it?

A. Al acquired the motor, as I understand it, and Guy the sawmill.

Q. What kind of a motor?

A. TD-40 International. [42]

Q. Originally that would be a very good motor?

A. Originally, yes.

Q. How long would you think that it ran while you were around it and working with it?

A. That would be hard to say.

Q. Did it run 'til May?

A. It was never run steady very long. Just as they were sawing up these logs.

Q. Did you use it for anything other than sawing logs? A. No.

Q. You did saw up quite a lot of logs?

A. I helped. It was their logs, and Al was doing the sawing.

Q. Did Mr. Heady tell you that the mill had served it's purpose so far as he was concerned, that he just wanted it to saw logs and lumber to build the hotel? A. I couldn't say.

Q. Was there something like that?

A. I couldn't say definitely.

(Testimony of Lawrence E. Slavin.)

Q. I will ask you if he didn't say to you, "I will give you my half interest in that sawmill. It can serve no purpose to me, and it will be a benefit to you," and if you didn't say, "Well, it's just like a gift from God, you don't owe me anything, and I sure appreciate it"?"

A. No, sir. Mrs. Heady wasn't there.

Q. I asked you if you didn't say that to Al? [43]

A. I don't recall the words.

Q. Did you say it was a gift from God?

A. No, I knew it wasn't.

Q. Or a gift from heaven? A. No.

Q. What were the words you said that it was just a gift? A. I didn't say it was a gift.

Q. What words did you use to Mr. Heady?

A. I said I would be satisfied with that arrangement.

Q. Didn't you add to that these words, "Al, you don't owe me anything, and I sure appreciate it"?"

A. Maybe I said that after he gave me the sawmill, they wouldn't owe me.

Q. You got mad at Mr. Waddel?

A. I didn't get mad at him.

Q. You just thought he couldn't run a sawmill? A. He was a good sawmill man.

Q. Why did you quit there and go fishing?

A. I was intending to go fishing all the time.

Q. There was no trouble between you and Mr. Waddel? A. No.

Q. You just quit and went fishing?

(Testmony of Lawrence E. Slavin.)

A. After Al and I had the set-to I admit I couldn't see where I was coming out on the deal. I said they were ruining the sawmill. [44]

Q. Who were?

A. Between him and Guy. They was sawing the logs.

Q. When was that?

A. I don't remember the date. I can say where and when. We were sitting in the Yashure Bar. We were both having a few. There was some talk came up. It was the motor that was hurting me to see that good motor ruined, and especially if I was taking it over. I think it was the same day I drawed their attention to the oil leaked out the front main. Anyway it came up that evening and I had told them before there was something wrong with the motor. I admit it was a good motor, but it wasn't put together right in the first place, and they was using at that time outboard motor oil instead of diesel oil, so then my nephew and me took the head off it and found a broken rocker arm and two bent pushrods. That is enough to stop any motor from operating efficiently.

Q. What date did you take that apart and find that condition?

A. That was during the time that my nephew and me were staying at the hotel, in the spring after April 25th, or about that time.

Q. Did you fix that up?

A. No, I had to send for parts for it.

Q. Did they come?

(Testimony of Lawrence E. Slavin.)

A. They did while I was up on the beach fishing the first time. When I came back around the 1st of June they were there. [45]

Q. Did you put them in?

A. Yes, but still the motor wouldn't function.

Q. Who put them in for you? A. I did.

Q. Do you suppose you put them in right?

A. Yes.

Q. Did it run after you put those parts in?

A. About the same as it did before, because I found out later there was a broken nozzle chain, I believe is what they call it. I took that out and put in a new one. It was really over that that the set-to come later on, because when I was speaking to Al it came up about the broken rocker-arm and the bent push rod. He said, "You didn't find that. Hap found that." He is my nephew. Then when I told him about the broken chain he insinuated that I broke that when I took it out, so I told him he could keep his mill. There was no bill of sale and I didn't think it was my mill. They was still using it.

Q. Who was running the mill then?

A. Guy Waddel. I was on the off-bearing.

Q. For the sake of the jury what is that?

A. That is taking the slabs and boards away from the saw—the cut lumber.

Q. You stood then what would be behind the saw, or in front of the saw and after the work went by you picked it up and [46] carried it away?

A. Yes.

(Testimony of Lawrence E. Slavin.)

Q. And the same with the lumber?

A. Yes.

Q. How long did you do that?

A. I didn't keep track of the time. It was after Al came back from fishing. We might have worked four or five days, or a week.

Q. When did that mill last run so far as you know?

A. So far as I am definite of that is the last time. That is after they finished them logs. They run it after I left there.

Q. Did Guy Waddel continue to operate it when you were fishing? A. Yes.

Q. Was he operating it when you returned from fishing?

A. No, I believe by that time Guy had sold the sawmill.

Q. Do you know who Guy sold it to?

A. I believe a fellow by the name of Chuck Gregmier.

Q. Isn't it Quigmier? A. I don't know.

Q. Is he still operating the mill?

A. No, I think not. I think he has released it.

Q. Didn't that mill run last year?

A. As I say, the only time I definitely know of, any other [47] time——

Q. You knew that it was running all last year?

A. No.

Q. Is it still running? A. No.

Q. How do you know it isn't?

(Testimony of Lawrence E. Slavin.)

A. The man that is taking over, or leasing it from this Quigmier came to me two or three weeks ago, said he was going to take it over, and said he heard I was a little acquainted with the motor, and when he got to operating would I come down and show him what I knew about the motor.

Q. Did you tell him that you would?

A. I told him that Wayno Salo was a Diesel man and acquainted with those motors, and it would be better for him to get him, but if he was unsuccessful I would show him what little I knew.

Q. This Wayno Salo is a good Diesel engineer?

A. Pretty good. Best there is around.

Q. He had fixed the motor before?

A. As best he could with the material at hand.

Q. He is a better engineer than you?

A. Definitely. I go to him to find out.

Q. Mr. Quigmier—did you tell him you owned a half interest?

A. That transaction went through when I wasn't there.

Q. He leased it? [48]

A. I think he bought it. Al told me he bought it.

Q. Al told you to get around there and protect yourself?

A. No, he said Guy sold the sawmill and I would have to go fight it out with Guy.

Q. He told you it was your mill?

A. No, it wasn't my mill.

Q. It had been?

A. No, the agreement was that they finish his

(Testimony of Lawrence E. Slavin.)

sawing before. They never had finished his sawing.

Q. Didn't you help finish the sawing for him?

A. No.

Q. Whose lumber were you sawing?

A. Al's and Guys'.

Q. You finished that, didn't you? A. No.

Q. How do you know you didn't?

A. There was logs still there.

Q. You finished and went off?

A. If logs were there apparently I didn't finish.

Q. No, no, you went off to fish?

A. I told him there wasn't no use for me to stick around.

Q. When did you tell him that?

A. About the 20th of June.

Q. Whose logs were left?

A. Al Heady's and Guy's. [49]

Q. How do you know?

A. Take their word for it.

Q. Did they tell you that? A. Yes.

Q. Which one? A. Both of them.

Q. When did they tell you that?

A. That had been spoken of a number of times prior to this time of sawing. He left them in the fall until that fall, either five or ten thousand feet in the fall.

Q. What time?

A. I don't definitely know, maybe the 1st of December.

Q. In the fall of forty-seven? A. Yes.

(Testimony of Lawrence E. Slavin.)

Q. That was when you were staying at Mr. Heady's?

A. Yes. We sawed out the two by twelves that we used for stringers on the stairways.

Q. How did you go out there?

A. Riding with Al.

Q. In his truck? A. Yes, riding with Al.

Q. How many days do you think you worked up there at the sawmill? A. I don't know.

Q. As I understood you awhile ago when Al told you he was [50] going to give you his half interest in the sawmill you were very much pleased?

A. At that time.

Q. You did make some statement to him that you were very well pleased?

A. Yes, at that time.

Mr. Bell: That is all.

The Court: Any re-direct?

Redirect Examination

By Mr. McNealy:

Q. You have heard a little bit about a sawmill in this case, haven't you, Mr. Slavin?

A. That is correct.

Q. Will you state for the benefit of the Court and Jury who owns the sawmill now?

A. I don't definitely know, but I understand that this Quigmier.

Q. Did you ever get any money out of it?

A. Not a cent.

(Testimony of Lawrence E. Slavin.)

Q. Do you know that Guy Waddel and the defendant, or one of the defendants, Mr. Heady, sold the sawmill to a party by the name of Bruce two or three years ago?

A. Yes, I understood that.

Q. In other words, they had been selling this sawmill all over [51] the country down there?

A. Yes, sir.

Q. Answer this yes or no. Did Mr. Heady endeavor to dump this sawmill into your lap to pay you for your wages?

Mr. Bell: Object as incompetent, irrelevant and immaterial, not within the pleadings.

The Court: It may be irrelevant and immaterial, but it is not a proper question.

Q. Did you ever get a bill of sale to the mill?

Mr. Bell: Objected to. It has been asked and answered.

The Court: Only by answer to question put by counsel for defendants. Overruled.

A. No, I never did.

Q. Did you ever have possession of this sawmill? A. No.

Q. Now, on cross-examination it was brought out that you were sawing lumber with this sawmill. Who were you sawing the lumber for?

A. I wasn't sawing, merely helping, working there.

Q. Who paid you for that?

A. I never received anything but a few pieces of lumber.

(Testimony of Lawrence E. Slavin.)

Q. Will you explain to the jury how much lumber?

A. At the time I was helping them there in December I got three six by sixes twenty feet long, then sometime in the summer, in [52] June, I got eight two by fours twelve foot that Guy figured wasn't good enough to put in an order, and two two by twelves.

Q. That is all the pay you received for this work? A. Yes.

Q. Were you working for Guy Waddel then, or the defendant, Heady?

A. I was trying to work to get the sawmill clear so that I could take it over.

Q. Did you ever take the sawmill over?

Mr. Bell: Objection, calling for a conclusion.

The Court: Overruled.

A. No, never did.

Q. You don't have it now? A. No.

Q. Never have had it? A. Never have.

Q. Was it, or was it not your understanding at one time that you were to have this sawmill for your wages? A. Yes.

Q. Now the fact is that you did work for the Headys, did you not? A. Yes, I did.

Mr. Bell: Object to going into that.

The Court: That is covered in the examination in chief. The objection is sustained. [53]

Q. On cross-examination a party was brought up by the name of Tommy Wickland. Are you acquainted with Tommy Wickland? A. Yes.

(Testimony of Lawrence E. Slavin.)

Q. Did Tommy Wickland work on the Heady Hotel at the same time that you did? A. Yes.

Mr. Bell: I object. It is incompetent, irrelevant and immaterial.

The Court: The objection is sustained and the jury will ignore anything pertaining to this.

Mr. McNealy: May we have a few minutes recess at this time.

The Court: Court will stand in recess for ten minutes.

(Short recess.)

The Court: Without objection the record will show all members of the jury present, and counsel may proceed with the examination.

LAWRENCE E. SLAVIN

plaintiff, testifies as follows on further

Redirect Examination

By Mr. McNealy:

Q. Mr. Slavin, on cross-examination you were sort of cut off on part of this conversation with the defendant, Mr. Heady, which took place at the Yashure Club. Will you complete that? [54]

A. As I say, we had both been having a few drinks, that is we was drinking together until this argument came up about the motor, and I told him then I didn't think I wanted to go through with it, that there was no bill of sale and they were ruining the motor and about the chain he accused me

(Testimony of Lawrence E. Slavin.)

of breaking it and I didn't like the accusation.

Q. Then you testified you had another conversation with Mr. Heady outside of the hotel when he came back from the outside will you complete that conversation.

A. I believe I very nearly covered all of that. He said I would have to settle it up with Guy, and I asked him at the time what right Guy had to sell the sawmill and he couldn't answer that, and when I came back from fishing Al was there and he never approached me saying he was through with the sawmill. Seems he turned it over to Guy and Guy done what he pleased with it, and that is what he told me there in front of the hotel that I would have to go see Guy for it that he considered he was straight with me and settled up.

Q. After that time did Mr. Heady offer you any other settlement? A. Yes.

Q. State what that was.

A. Last spring when I was working with Squeaky Anderson, Al was over there. He said could I come over sometime he would like to talk to me. I said yes I would that following Sunday, so I did. He had a planer out there that is in pretty bad shape.

The Court: What?

A. A planer, and he asked me if I would take that as part settlement on the deal, gave me to understand there was several would like to have it. I asked him how much. He said seven hundred dollars, and I said I couldn't see it in the planer, so

(Testimony of Lawrence E. Slavin.)

that fell through. At a later date I talked to Al to see if I couldn't get some kind of settlement and he said Guy is coming up for the spring bear hunt and we would talk. I don't know if he came for the spring hunt, but he did the fall hunt and I wasn't approached about anything.

Q. Was this planer offered as a part settlement, or full settlement?

A. I understood as part settlement.

Q. What was it offered for? This labor claim?

Mr. Bell: Object to him leading the witness.

The Court: Objection sustained. You can tell what was said.

Q. Was this planer offered as a seven hundred dollar payment on this twelve hundred dollar claim?

Mr. Bell: Object to that.

The Court: It is a leading question. After all, the jury is competent to draw the conclusion as to how it was offered. [56]

Q. Can you testify as to what you said and what Mr. Heady said?

A. Pretty close, yes.

Q. If you will.

A. He says how about taking that planer as part settlement in the deal, that some other people was wanting it, but he would let me have it if I wanted it. I said how much. He said seven hundred dollars and I said no I wouldn't do that if he had a chance to sell it go ahead.

Q. Did this conversation take place after this sawmill situation?

A. Yes, last spring.

Mr. McNealy: That is all.

(Testimony of Lawrence E. Slavin.)

The Court: Any further cross-examination?

Recross-Examination

By Mr. Bell:

Q. You testified——

The Court: Did you testify?

Q. Did you testify that Mr. Heady and this fellow, Waddel, sold this sawmill to somebody by the name of Bruce? A. Yes.

Q. That happened before you ever had anything to do with it. Three or four years ago?

A. Yes.

Q. Then they got it back from Mr. Bruce? [57]

A. Yes.

Q. That all took place before you were interested in any way? A. Yes.

Q. Now, you say you didn't take possession of the mill, but you did take Al's half?

A. No, I didn't receive it.

Q. You and Waddel were in possession?

A. No, not entirely. We was as to working it, but as far as owning it it wasn't mine yet.

Q. You bought parts for it and repaired it?

A. Yes.

Q. And you understood that you owned a one-half interest and that Waddel owned a one-half interest?

A. I was to receive a one-half interest as soon as they finished their sawing.

Q. Then you got mad at Waddel and went fishing? A. I did not get mad at Waddel.

(Testimony of Lawrence E. Slavin.)

Q. You complained about ruining the motor?

A. I complained about it. I thought it might be something he overlooked.

Q. All you ever figured you owned was Al's half interest?

A. I thought I would get that.

Q. You never figured to own Waddel's interest?

A. No.

Q. You never understood you would have Waddel's interest? [58]

A. Only in another deal with Guy.

Q. You and Guy made a deal where you were buying Guy's interest?

A. I would have liked to buy him out that same morning. I thought maybe I could get it for a thousand dollars and then this deal with Al, and get it all my own, that I could get some place with it by myself, but he wanted two thousand dollars for his half, and that was that.

Q. When was that?

A. Five o'clock in the morning.

Q. Were you drinking?

A. Not heavy, no.

Q. You had been drinking?

A. I had been drinking with the defendant that night.

Q. You did go up there at five o'clock and get Guy up?

A. I think he was awake. His wife was up.

Q. He was in bed?

A. Yes.

Q. You tried to buy his half interest in the mill?

A. I didn't make any offer. He said two thousand dollars and I seen I couldn't reach it.

(Testimony of Lawrence E. Slavin.)

Q. What did you do then?

A. I forgot about the deal.

Q. You went back to the Yashure Club and really did get drunk? [59]

A. I don't know, maybe I did. I don't think so.

Q. The night you were jumping on Mr. Heady in the Yashure Club you were plenty full then?

A. I think we were about neck and neck.

Q. You kinda got the start of him, didn't you?

A. I don't think so. I don't recall.

Q. What did you use this lumber for you took away?

A. The three six by sixes, well, they are all laying there on the place yet.

Q. You still have them? A. Yes.

Q. Out at your farm? A. Where I live.

Q. Out where you live now? A. Yes.

Mr. Bell: That is all.

The Court: Does the jury have any questions?

(No response.)

Mr. McNealy: We have no more witnesses, Your Honor.

Mr. Bell: Just for the record, Your Honor, we move to dismiss and to instruct the jury to return a verdict for the defendants.

The Court: Motion is denied.

Mr. Bell: Exception.

The Court: And the exception is noted. [60]

The Court: Witness may be called on behalf of defendants.

Mr. McCarrey: Call Mr. Heady.

ALFRED HEADY

called as a witness, having been first duly sworn,
testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Your name is Alfred Heady?

A. Yes, sir.

Q. You are one of the defendants in this cause
of action of Larry Slavin versus Alfred Heady and
Esther Heady? A. Yes, sir.

Q. I will ask if you know Mr. Slavin?

A. Yes, sir.

Q. When did you first meet him?

A. About 1940 or '41.

Q. Where were you working?

A. At the Base.

Q. Work as carpenters together?

A. Together sometimes.

Q. What was Mr. Slavin doing?

A. He was doing carpenter work. We were
working mostly on form work.

Q. He was working on practically the same type
of work? [61]

Q. Did you have occasion to see Mr. Slavin on
or about the 2nd day of October, 1947, at Homer,
Alaska? A. Yes, sir.

Q. I will ask if you know what the circumstances
were in regard to that meeting?

A. When he came over from Seldovia he had

(Testimony of Alfred Heady.)

stopped at the building where Tommy Wickland was working. I don't know what he did. He said he helped him a little bit, and they came down to my place for dinner.

Q. Who is Tommy Wickland?

A. He is a gentleman that was helping me construct my building.

Q. Had you and Tommy Wickland ever worked together before? A. Yes, sir.

Q. As a matter of fact you and Mr. Wickland and Mr. Slavin worked together out here at the Post? A. Yes.

Q. How long has Mr. Wickland been a carpenter?

A. I couldn't say. To my knowledge 25 years.

Q. Anything else?

A. When I first knew him he was a builder in the states.

Q. What is your business?

A. I am a carpenter.

Q. How long have you been a carpenter?

A. Fifteen or twenty years. [62]

Q. Are you a finish carpenter?

A. Yes, sir.

Q. Can you do cabinet work?

A. Of course, cabinet work is different from carpenter work. I am not very good at cabinet work, but that is more like a trade of its own.

Q. Can Mr. Wickland do finish carpenter work?

A. Yes.

Q. Can Mr. Slavin do finish carpentry work?

A. Yes.

(Testimony of Alfred Heady.)

Q. Now, I believe you testified Mr. Slavin came over and had stopped off where Mr. Wickland was working at the hotel?

A. Yes, sir. To my knowledge it is.

Q. When did you first see Mr. Slavin that day?

A. When he came down to my home.

Q. When was that? A. Lunch time.

Q. Did you and Mr. Slavin have a conversation?

A. Yes.

Q. What?

A. He said I stopped up at the building and told Tommy to give me a hammer. Said I helped him put down some subflooring.

Q. What else?

A. He said, Al, I am going to be here for awhile and said [63] I would like to help up on your building. I said, Mr. Slavin, I would like to have you help me. I haven't any money though and we don't need you. Tommy and I can finish the building this winter, because material is so hard to get that we can't use you.

Q. What did he say?

A. He said so far as the money, Al, I don't want no money. Al, all I want is board and lodging, because I am going to be over here awhile and I just want to stay over here and be around with you all.

Q. You were all friends? A. Yes.

Q. What did you say?

A. I said, Larry, we don't have anything for you to do. We don't have material in often enough.

Q. Do you know the availability of materials at that time?

(Testimony of Alfred Heady.)

A. Yes, they were very hard to get.

Q. Where did you get your material?

A. Most from Palmer J. Lewis, Seattle.

Q. Did you have a supply of material on hand at the time Mr. Slavin came over?

A. Not very much lumber, but we did have some windows and doors.

Q. Were those framed together?

A. Yes. [64]

Q. They weren't in pieces?

A. As they ship them they come two windows together in their frames.

Q. Put together?

A. Not put together, in their frames. They come knocked down, too.

Q. Do you recall what the status of materials, aside from your windows, was at that time?

A. We didn't have practically anything.

Q. Coming back to the conversation, after you told Mr. Slavin you didn't have any money, and he said he just wanted to stay with you boys, what else was said?

A. I just told him I didn't have material and he couldn't help us out. I also told him Mr. Waddel owed me around a thousand dollars, that he had been down here a few different times and he would like to work it out on the building, which he was doing, but I couldn't use him nearly all the time.

Q. What did Mr. Slavin say to that?

A. I don't recall.

(Testimony of Alfred Heady.)

Q. What, if anything, took place after that?

A. He just seemed to stay around there.

Q. What hours were you working at that time, Mr. Heady?

A. Well, around that part of October I guess Tommy and me had been getting in around eight hour days, when we worked.

Q. Did you work every day? [65]

A. No.

Q. You didn't work every day?

A. No, not on the building.

Q. Did Mr. Slavin work every day when he was there? A. No, sir.

Q. What hours did Mr. Slavin work?

A. About the hours that we had until it got later in the season and the days so short, but in a building like that and no electricity we couldn't work long hours.

Q. Did he average forty hours a week?

A. No, sir.

Q. He didn't? A. No, sir.

Q. How many hours a week did he average, if you know?

A. I don't know. I didn't keep no time of the hours were worked.

Q. Why didn't you keep the hours?

A. I didn't hire him and didn't pay no attention to him being around there.

Q. Mr. Slavin did a pretty good job on the work he did do? A. Yes, he did.

(Testimony of Alfred Heady.)

Q. Did you hear Mr. Slavin testify to the fact that he wanted to put in the stairway?

A. Yes.

Q. Is that correct? [66]

A. Yes. He said, Al, I would like to put in that stairway. It was a stairway that makes a turn. Said he had always wanted to put one of those stairways in. I said all right if you are not going outside and want to stay around here.

Q. Did you work on Sundays? A. No.

Q. Did Mr. Slavin ever work on Sunday?

A. No.

Q. Did Mr. Wickland work on Sunday?

A. No, sir.

Q. Did you work Saturdays?

A. Occasionally, when we had material. Lots of Saturdays we didn't work.

Q. Did you hear Mr. Slavin testify he had his land surveyed? A. Yes.

Q. Do you know anything about that?

A. Nothing, only he borrowed my truck to go out and back.

Q. Do you know when he did that?

A. I believe that was in January, or just awhile before he went outside.

Q. That was after January 23rd, when he quit?

A. No, while he was staying with me and working around there.

Q. Did you work on Thanksgiving?

A. No.

Q. Did Mr. Slavin work on Thanksgiving? [67]

(Testimony of Alfred Heady.)

A. No.

Q. Where did you eat Thanksgiving dinner?

A. I believe at my home.

Q. Was Mr. Slavin one of your guests?

A. I believe he was there, yes.

Q. How many meals did he have a day when you were down there? A. Three meals.

Q. Did Mr. Slavin eat there all the time?

A. Almost every one. Every one when he was there.

Q. Did he ever complain of them?

A. Not to my knowledge.

Q. Did you work on Christmas? A. No.

Q. Did you work during Christmas week?

A. No.

Q. You did not? A. No.

Q. Did Mr. Wickland work that week?

A. No.

Q. Did Mr. Slavin work that week?

A. No.

Q. Did you work on New Years?

A. No.

Q. Did Mr. Slavin work on New Years?

A. No. [68]

Q. Did you have occasion to come to Anchorage during the first part of January, 1948?

A. Yes.

Q. Do you remember what time that was?

A. I don't just remember the date.

Q. Was Mr. Slavin working at that time?

(Testimony of Alfred Heady.)

A. He was there with Tommy. I don't know whether he was working or not.

Q. Was he working prior to the time you came to Anchorage?

A. Yes, when I had work, or there was work for him to do he was.

Q. What percentage of days during the time you were there did Mr. Slavin work, if you know?

A. I don't know, because I didn't pay any attention to his days, or what he did work.

Q. Now, did Mr. Slavin ever use your truck for other things?

A. Oh, yes, he used it when he wanted to.

Q. Did he ever use it for his own purpose during the time he was working for you?

A. He could use the truck at any time he wanted to.

Q. But just answer the question. Do you know whether it was on a Sunday, or a work day?

A. At different times.

Q. Did he stay away a day or two when he was using your truck? [69]

A. No, not that I recall.

Q. Calling your attention to the testimony Mr. Slavin gave pertaining to the sawmill, I will ask, if you recall, when that conversation took place, and who was present?

A. It was just before Larry got ready to go outside.

Q. While he was still working for you?

A. Yes, the last week, I think.

(Testimony of Alfred Heady.)

Q. Prior to January 23, 1948? A. Yes.

Q. Go ahead, please, Mr. Heady.

A. We were talking about this sawmill. Larry mentioned he would like to have a sawmill. He had mentioned it at other times, and I did know he was interested in a sawmill, so I told Larry, or Mr. Slavin, that if he would take the sawmill and run it, if it was agreeable with Mr. Waddel for him to take it, so we could have some lumber around there, I would like to see the sawmill run, for my own part, as well as the community, and I would give him that sawmill, or my half of that sawmill.

Q. What did Mr. Slavin say?

A. He seemed very pleased. Said it was just like a gift from heaven, says you don't owe me anything.

Q. Who was present at that time?

A. Mr. Wickland, Mr. Waddel, Mr. Beyer and Carley Beyer.

Q. Was Mrs. Heady present?

A. I don't recall whether—— [70]

Q. Was Mrs. Heady present at that time?

A. I don't recall whether she was present right at that time, or not, because she was in and out of the building so much.

Q. Did Mr. Waddel hear you make that statement to Mr. Slavin? A. Yes, sir.

Q. What, if anything, was said by Mr. Waddel?

Mr. Nesbett: Object to that.

The Court: Overruled.

A. Mr. Waddel was there and Mr. Slavin says,

(Testimony of Alfred Heady.)

“What do you think of that deal, will it be agreeable with you if I work with you if Al gives me a half interest in the mill?” and Mr. Waddel said yes he would like to have him for a partner, because he needed someone to help him run it.

Q. I believe you heard Mr. Slavin testify that he ordered some parts for the sawmill?

A. Yes.

Q. Do you know whether he did or not?

A. Yes.

Q. Was Mr. Waddel present at that time?

A. They discussed the parts that same day.

Q. It was perfectly agreeable with Mr. Waddel at that time? A. Yes.

Q. And also with Mr. Slavin?

A. Yes, sir. [71]

Q. Did you hear Mr. Slavin testify you would give him the sawmill as soon as he got the logs sawed?

A. Not exactly. The understanding at that time was that I gave it to him then. He asked me, or rather I asked him when he was down at my home about giving him the bill of sale. He said, “There are three or four present here, and I am not worrying about a bill of sale.”

Q. Has Mr. Slavin ever asked you for wages for the time he worked for you down there?

A. No, sir.

Q. Has he ever billed you at any time?

A. No, sir.

Q. Has he ever come up and asked, “Al, when

(Testimony of Alfred Heady.)

are you going to pay the wages that I worked for down there?" A. No, sir.

Q. When is the first time that you knew that Mr. Slavin expected money from you?

A. When he filed this lawsuit. No, about a week prior to that we had a notice from Mr. McNealy, or a letter, that Mr. Slavin was asking for wages.

Q. Did you ever answer that notice?

A. Yes.

Q. What did you say?

A. We answered we didn't think we owed Mr. Slavin wages, because we never hired him. [72]

Q. Did you give Mr. McNealy that notice?

A. We mailed a letter to him.

Q. Did you ever have a reply to your letter?

A. No.

Q. The first you heard after that was when you were served with summons and complaint?

A. That is right.

Q. Did you hear Mr. Slavin mention a planer on his examination? A. Yes.

Q. Tell about that, if you please.

A. Mr. Slavin built him a carpenter shop, and I asked if he would like to buy that planer for his carpenter shop.

Q. When was this?

A. Sometime last summer.

Q. Do you recall what month?

A. No, I do not.

Q. Who was present at the time?

(Testimony of Alfred Heady.)

A. I don't believe there was anyone other than Mr. Slavin and myself.

Q. What did Mr. Slavin say?

A. He asked how much I wanted for it.

Q. What did you tell him?

A. Seven hundred dollars.

Q. What did he say? [73]

A. He thought it was too much.

Q. Did you offer him the planer for wages that you felt you owed him? A. No, sir.

Q. Did you ever have another conversation with Mr. Slavin about the planer? A. No, sir.

Q. Did you hear Mr. Slavin testify that he had a conversation with you over at Seldovia?

A. Yes.

Q. Did you have such a conversation with Mr. Slavin?

A. Not regarding the planer. I talked to him over there.

Q. Did you at that time state that you wanted to see him?

A. Not to my knowledge. I don't remember ever saying that.

Q. Is it your testimony that you did not ask Mr. Slavin to come over to Homer to see you?

A. Yes.

Q. Now, Mr. Heady, did you ever have a discussion, or a conversation with Mr. Slavin, that you would pay him two dollars an hour and give him room and board? A. No, sir.

Q. Did you ever have a discussion with him at

(Testimony of Alfred Heady.)

any time that you would pay him for the work done there? A. No, sir.

Q. What was the prevailing carpenters wages at Homer at that [74] time, if you know?

A. I don't really know. There is no carpenters union there and I don't know.

Q. Do you know what the carpenters were being paid there in Homer?

Mr. Nesbett: Object to that, your Honor.

The Court: I think the witness may answer.

A. I don't know what the scale was there. There was very few carpenters there.

Q. Did you have anybody else help you on the hotel, other than Mr. Wickland?

A. Not as a carpenter. Mr. Waddel wasn't a carpenter, but he was pretty good.

Q. Did you pay him anything for his work?

A. I allowed him a dollar and a half an hour.

Q. And board? A. No.

Q. What did you make here at the Base?

A. Dollar and a half an hour.

Q. And board? A. No.

Q. Board was extra? A. Yes, sir.

Q. What were the conditions in the fall of '47 as to employment? [75]

A. It was pretty bad.

Q. What were conditions, if you know, as to the economics of Homer in the fall of '47?

A. I wouldn't say they were good.

Q. As a matter of fact the road hadn't been completed? A. No.

(Testimony of Alfred Heady.)

Q. Wasn't completed until last fall?

A. No, sir.

Q. Had the dock been completed at that time?

A. No.

Q. As a matter of fact, Homer was in a very bad financial condition at that time?

Mr. McNealy: Objection. That is a leading question. I think counsel is doing the testifying now.

The Court: In other civilized countries leading questions are allowed, but our rule is——

Mr. McCarrey: Very well, your Honor.

Q. (By Mr. McCarrey): Did you hear Mr. Slavin testify in regard to the conversation with you outside the hotel pertaining to the sawmill?

A. Yes, sir.

Q. What are the facts as you recall it?

A. He asked me something about the sawmill, and I said Larry I thought that was all settled, that you and Mr. Waddel was operating that sawmill, and I don't remember what else was [76] said—not much.

Q. Did he say anything about the bill of sale at that time? A. No, it wasn't mentioned.

Q. You remember anything else that was said in that conversation? A. No.

Q. Did you hear Mr. Slavin testify that you had purchased the engine and Mr. Waddel had the other part of the sawmill? A. Yes, sir.

Q. Is that correct?

A. Part is. When I went in partnership with Mr. Waddel this engine had all new parts for it,

(Testimony of Alfred Heady.)

but they had never been put together. There was supposed to be a new head, the block for the engine there. When we got a mechanic out there to put it together the block wasn't there, so we had to order a new one.

Q. Did you order a new one?

A. We did order a new one. I paid for the parts to fix the engine up to put it back together and the other money that I spent cash is how I bought the half interest in the sawmill.

Q. Do you know how much you spent for that interest?

A. Between a thousand and twelve hundred dollars. I don't remember just exactly what it was.

Q. I will ask if you heard Mr. Slavin testify about a conversation he had with you down at the Yashure Club? [77]

A. Yes, sir.

Q. Do you recall that conversation?

A. Yes, sir.

Q. Tell what you understood it to be?

A. I went into the Yashure Club. Mr. Slavin was there. Yes, I had a beer, or a drink, with him. I believe it was beer with him. The talk came up about this engine. He told me the engine wouldn't run, there was something wrong, and I said I don't know, Larry, when we closed it down last fall it was running. He said it isn't running now, that he and his nephew had been out there working on it, said there was a rocker arm broken and nozzle broken. I said maybe you broke that nozzle and he got kinda mad, and said I will give you the sawmill

(Testimony of Alfred Heady.)

back, and I said no, Larry, I gave you the sawmill, and if you don't want the sawmill you go talk to Mr. Waddel about it.

Q. Did you hear Mr. Slavin testify that he had gone up to the sawmill and was working with you and Mr. Waddel sawing logs in the spring of 1948?

A. Yes, sir.

Q. Had you obtained all of your logs prior to the time Mr. Slavin left the sawmill?

A. Yes, mine were. Mr. Waddel had a few more to be sawed, he and Ted Hershey.

Q. Did Mr. Slavin stay on after you got all of your logs out?

A. Yes, I believe he did. I had practically all my logs [78] sawed when I delivered my interest over to him.

Q. Do you remember how many thousand feet left to saw?

A. Just a few house logs of my own, I think.

Q. The balance were for Mr. Waddel and Mr. Hershey?

A. They were their logs. I think Mr. Hershey was having Mr. Waddel saw some out for him, but they didn't belong to me.

Q. Did you ever take possession of the sawmill after you had given it to Mr. Slavin?

A. No, sir.

Q. And haven't to this date? A. No, sir.

Q. Did you ever receive any money from the sale of the sawmill to someone else?

A. At one time.

(Testimony of Alfred Heady.)

Q. But that was before? A. Yes.

Q. And not after this time when you gave it to Mr. Slavin? A. No, sir.

Q. When you sold it before you gave it to Mr. Slavin how long was that before?

A. Something like two years.

Q. Two years prior to the time you gave it to Mr. Slavin? A. Yes, sir.

Mr. McCarrey: That is all.

The Court: We will recess now for ten minutes.

(Short recess.)

The Court: Without objection the record will show all members of the jury present, and counsel for plaintiff may examine the witness.

ALFRED HEADY

one of the defendants herein, testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. Mr. Heady, did you state you were a finish carpenter? A. Yes.

Q. Did you come to Alaska in '40 or '41?

A. Yes, sir.

Q. You met Mr. Slavin at that time at the Fort?

A. Yes, sir.

Q. Prior to that time your employment in the states had all been as a rigger? A. No, sir.

Q. Had you worked as a carpenter?

A. Yes, sir.

(Testimony of Alfred Heady.)

Q. As a finish carpenter? A. Yes, sir.

Q. Did you do any finish carpenter work on this hotel in Homer? A. Yes, sir.

Q. What part did you do? [80]

A. On the insulation.

Q. Was Tommy Wickland a finish carpenter?

A. Yes, sir.

Q. Did he do any work of that nature for you?

A. Yes, on the ceilings.

Q. Did you do any other finish work here?

A. Yes, putting in the stairways.

Q. You helped on that?

A. I worked as a finish carpenter.

Q. With respect to the conversation with Mr. Slavin on October 2nd, I believe you stated, I don't have any materials on hand to keep you working?

A. Yes, sir.

Q. What request had he made when you made that statement?

A. That he was just going to help us out for his board and room.

Q. Did he say for his board and room?

A. Yes, sir.

Q. He had just come from Seldovia at that time?

A. Yes, sir.

Q. Did he have his tools with him?

A. I don't believe he did.

Q. He said he would stay around and help you boys for awhile? A. I believe he did.

Q. Then he was going to get his land surveyed and go on outside? [81] A. Yes, sir.

(Testimony of Alfred Heady.)

Q. You say you had no materials on hand to keep him busy?

A. Didn't have materials on hand to keep ourselves busy.

Q. What material did you have on hand?

A. Some windows and doors.

Q. You had all the windows and doors?

A. I don't believe I did.

Q. You could have had them all?

A. I don't think so.

Q. You had most of them?

A. As I remember, most of them.

Q. You had about two thousand feet of Celotex, didn't you?

A. I don't recall how much Celotex.

Q. You could have had that much Celotex?

A. Oh, yes.

Q. And you had most of the shiplap for the subfloors?

A. The subfloors were practically all in.

Q. What is the inside of that building—the dimensions?

A. About twenty-eight feet by eighty—a little over eighty.

Q. You had enough subflooring to finish the subfloors at the time Mr. Slavin arrived on the scene?

A. That is right.

Q. You had enough, including the amount you got from Mr. Tom Shelford? [82]

A. I believe that is right.

(Testimony of Alfred Heady.)

Q. Did Mr. Slavin say how long he would like to stay around with you boys? A. No.

Q. You knew he had worked for the cannery that spring and summer?

A. I didn't know that he had worked for them. I knew he was over there, had seen him over there.

Q. He told you he was working for Squeaky?

A. I don't know that he did.

Q. You knew that he had worked for Squeaky?

A. No.

Q. Did he say he was broke and would just like to have his room and board while he killed some time around Homer?

A. No, sir. I told him that we didn't need him, that we didn't want him to work for us.

Q. Why did you tell him that?

A. Because we didn't need him.

Q. I believe you said that was because you didn't have materials?

A. Not enough to keep one man going.

Q. Did he use those materials on the job while he worked for you? A. Some of them.

Q. When did Mr. Slavin get his tools over, if you recall? [83] A. How did he get them?

Q. No, when?

A. I don't know when he did get them.

Q. It could have been the following Friday after he arrived? A. Possibly.

Q. He did bring them over and use them in his work for you right through to January 23rd, if that was the date?

(Testimony of Alfred Heady.)

A. I think he left them there all winter.

Q. Now, is it your testimony that from October 2nd to the end of January that no discussion as to wages was ever had between you and Mr. Slavin?

A. Wages?

Q. Yes. A. No, sir.

Q. Do you deny any discussion was ever had with Mr. Slavin in regard to the amount paid him while working for Squeaky Anderson?

A. No.

Q. You don't know what he received there from Squeaky? A. No.

Q. You did know, however, that Mr. Slavin had a substantial bank account and money in his pocket at the time he arrived in Homer on October 2nd?

A. No, I don't know that.

Q. You didn't give him any money all the time he stayed there [84] in Homer, did you?

A. No, sir.

Q. You didn't keep any time that Mr. Slavin worked? A. Why, no.

Q. Did you keep any time that Tommy Wickland worked? A. No, sir.

Q. How long did Tommy Wickland work on the construction of that hotel?

A. He still helps me some.

Q. I know, but how long did he work steady?

A. Close to eighteen months, but it wasn't steady, or I mean not straight work.

Q. Was he just working for his board and room?

A. No, sir.

(Testimony of Alfred Heady.)

Q. Have you paid him?

A. I have paid him almost all of it.

Q. As a matter of fact, you have only paid him a hundred dollars? A. No, sir.

Q. How much have you paid him?

Mr. Bell: Your Honor, I object. It's incompetent, irrelevant, immaterial and prejudicial.

The Court: The objection is sustained?

Q. He isn't there with you now steady?

A. Working? [85]

Q. Yes. A. No, he just eats with us.

Q. Did you ever tell Mr. Slavin that you would like to have him build the stairway in that hotel?

A. No.

Q. Did he just say I would just love to do it, Al, please let me build it?

A. He said he would like to do it for the experience.

Q. Did you help on that? A. Yes, some.

Q. You were outside most of the six weeks that Mr. Slavin was first there?

A. Not all the time.

Q. A good part of it?

A. No, I wouldn't say that.

Q. Half the time? A. No.

Q. A third of the time? A. Possibly.

Q. What were you doing the other two-thirds of the time, working steady?

A. Tommy and I come over to the building and worked when there was material.

(Testimony of Alfred Heady.)

Q. Did you at any time run out of material while Mr. Slavin was there? [86]

A. Some types of material.

Q. There was always some types?

A. No, not all the time.

Q. Can you state a time when you had to stop for want of materials?

A. Quite a few times.

Q. Did you hang any windows in that hotel?

A. No, sir.

Q. Mr. Slavin hung them all?

A. I don't recall him hanging them all.

Q. He could have? A. Possibly.

Q. Do you know how many there are?

A. Not off hand I don't.

Q. Could you look at this exhibit and state?

A. If I could count them.

Q. Plaintiff's Exhibit No. 1.

(Mr. Nesbett hands the exhibit to the witness.)

The Court: The witness has examined the exhibit.

Q. (By Mr. Nesbett): Can you state?

A. There is around twenty-eight.

Q. Twenty-eight what? A. Windows.

Q. Are they all double windows? [87]

A. No, just the downstairs are double.

Q. How many doubles?

A. I will have to count those. About twelve here, I believe.

(Testimony of Alfred Heady.)

Q. About twelve doubles downstairs?

A. Yes.

Q. And the balance are single upstairs?

A. Yes.

Q. Any in the basement?

A. The basement windows was in.

Q. Who hung the outside doors, Mr. Heady?

A. Mr. Slavin and Mr. Wickland.

Q. Mr. Slavin did a pretty good job on all the work he did for you? A. Yes.

Q. He built the stairway inside by himself?

A. No, I helped him, and Tommy helped him at times.

Q. Any percentage of time come to your mind that you spent on those stairways?

A. No, I couldn't say.

Q. The main stairway comes down and branches out into two parts of the hotel?

A. No, one leading to the lobby and the other in the dining room.

Q. There are two separate stairways?

A. That is right. [88]

Q. And then one from the dining room down into the basement?

A. Well, it isn't finished up.

Q. You can use it as a stairway.

A. Oh, yes, we get over it.

Q. Did you ever pay Mr. Slavin the cost of sharpening his saws while he was working for you there?

A. I had Mr. Slavin's saws filed myself.

(Testimony of Alfred Heady.)

Q. Did you pay for it? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. I believe you testified, did you not, that sometime after January 23rd you had a conversation with Mr. Slavin that you would give him that sawmill? A. I did.

Q. And at that conversation there was present Mr. Tommy Wickland? A. Yes.

Q. Mr. Beyer of Homer? A. Yes, sir.

Q. And another Beyer? A. Yes, sir.

Q. And Mr. Waddel? A. Yes, sir.

Q. Where was that conversation had—in the hotel? [89] A. In the building, yes.

Q. Where in the building?

A. Up on the second floor.

Q. How did that conversation happen to arise?

A. Just through a discussion or talk.

Q. Did you say, “Larry, I know you would like to own a sawmill. I am going to give you mine?”

A. We were talking about this sawmill. Larry had always said he wanted a sawmill. That is when I told him that if he would take the sawmill I was finished and had no further use for it—had no further use for the sawmill that I would give him my interest.

Q. Why did you give it to Larry rather than to your partner, Mr. Waddel?

A. It takes two to run a sawmill and I thought Mr. Slavin would make a good partner and the two could work together.

(Testimony of Alfred Heady.)

Q. You didn't offer him your sawmill because you thought you owed him something?

A. No, sir.

Q. If he had asked you for wages at that time what would you have told him?

A. Told him I didn't owe him anything.

Q. Not a cent? A. Not a cent.

Q. Mr. Wickland is in Homer? [90]

A. Yes.

Q. Mr. Beyer is in Homer?

(No response.)

Q. Carley Beyer?

A. No, he is in Chicago.

Q. Are they going to testify here?

A. I don't know.

Q. Have you subpoenaed them?

A. No, sir.

Q. Now, who is Mr. Hershey?

A. Ted Hershey. He is dead now. He lived in Homer.

Q. He had some lumber sawed over at the sawmill owned by you and Mr. Waddel?

A. He had some lumber cut after I got mine cut and gave my half interest to Mr. Slavin.

Q. At the time you say you gave your half interest to him you still had some lumber to be cut?

A. Possibly fifteen or twenty house logs. We saw them on three sides, six by six. That is all I had to saw, maybe half a day's work—half a day's sawing.

(Testimony of Alfred Heady.)

Q. Now, was Mr. Hershey having some logs sawed?

A. Mr. Waddel was sawing some logs for him.

Q. The deal was that you, Mr. Waddel and Mr. Hershey all had to have some logs cut, and you were pooling this, wasn't that the agreement? [91]

A. No, sir.

Q. You are positive of that? A. Yes, sir.

Q. You had all your logs out of there while they were still working on Mr. Hershey's logs?

A. Hershey didn't have any there only what was given to him.

Q. You had no logs on the site at all?

A. Just those few.

Q. Hadn't you spent about a week or ten days around the mill before you went up to Caribou Lake? A. I was just helping Guy.

Q. How much time did you spend around the mill when you came back from Caribou Lake?

A. Very little.

Q. How long, if you can recall?

A. Possibly a week.

Q. What were you doing during that week?

A. You mean at the mill?

Q. Yes. A. Just helping on the mill.

Q. Helping Guy saw?

A. Just helping him out.

Q. Mr. Slavin left before you left?

A. No.

Q. You came on back to Homer? [92]

A. Yes, sir.

(Testimony of Alfred Heady.)

Q. You had all your logs left and were finished there so far as your hotel was concerned?

A. I had left them, it was the year before.

Q. You needed no more?

A. I could use more if I could buy it.

Q. Were you willing to buy it from Waddel and Slavin even though you could give him the mill free of charge?

A. Any that the mill could saw. I couldn't use rough lumber in my building.

Q. You would buy this from them just so the mill could run as a community benefit?

A. That is right.

Q. When you offered to give him this sawmill you had no more lumber to come from that mill?

A. Just these logs that were to come out in the spring.

Q. Then when Mr. Slavin testified you were to get about fifteen to twenty thousand feet yet with respect to you and Waddel he was not telling the truth?

Mr. Bell: Objection as something that is not in evidence.

The Court: If Mr. Slavin so testified.

Q. (By Mr. Nesbett): Then if he did. The answer was?

A. Yes, that he wasn't telling the truth. [93]

Q. Then it is also your testimony, Mr. Heady, that Mr. Slavin never at any time requested wages from you until you received this letter from Mr. McNealy last year?

A. That is right.

(Testimony of Alfred Heady.)

Q. It was never discussed between you?

A. No.

Q. Have you still got that planer?

A. Yes.

Q. At the time you discussed that planer with Mr. Slavin the question of any money due him was never raised between you? A. No.

Q. Your testimony, I believe, then is that you offered to sell it to him for seven hundred dollars?

A. That is right.

Q. For cash?

A. It didn't get that far along.

Q. What did he say?

A. As I recall it he said it was too high.

Q. And no discussion with regard to wages at that time? A. No.

Q. About what date was that?

A. I don't recall.

Q. In the spring?

A. In the spring or summer, somewhere in there.

Q. Was that conversation held at the Heady Hotel? [94] A. Yes, not in it.

Q. In front of it? A. That is right.

Q. Who brought the subject up, Mr. Slavin, or you?

A. I guess I was the one that asked if he would like to buy it.

Q. What was the conversation just prior to you making that request of him?

A. I don't recall what it was.

(Testimony of Alfred Heady.)

Q. About when did you see, or rather did you deny that you had seen Mr. Slavin in Seldovia? I am questioning you about his testimony where he says you asked him to come over.

A. Well, yes, in respect to coming over, but I did meet him over there and talked to him.

Q. Did you see him a few days later in Homer?

A. Not a few days.

Q. How many?

A. I don't remember how long it was after that.

Q. Was that when you talked to him about the planer?

A. When he did come over?

Q. Yes.

A. Yes.

Q. Did you have an idea of selling the planer when you saw him over in Seldovia?

A. The fact is that the planer has been for sale for sometime. [95]

Q. How long?

A. At least a year.

Q. Mr. Heady, do you know what the rate scale was in the fall of '47 and early '48?

A. No, I don't.

Q. Where you were in '40 and '41, with Mr. Slavin, you got a dollar and a half an hour, I believe you testified?

A. I left there, I believe, in '43.

Q. You were working ten-hour days out there then?

A. Some of the time we were working ten-hour days, but as I recall it we worked most of the time eight hours.

(Testimony of Alfred Heady.)

Q. On the ten-hour days you received pay for the extra two hours?

A. I don't recall. We must have got overtime.

Q. The hotel is open to the public now, isn't it, Mr. Heady? A. Yes.

Q. How many rooms do you have?

A. We have twelve rooms upstairs on the second floor.

Q. Do you have any on the first floor?

A. No, just the lobby.

Q. How many guests will those twelve rooms accommodate?

Mr. Bell: Objection. Improper cross-examination and taking time.

The Court: Sustained. [96]

Q. Do you know where Guy Waddel is now?

A. Well, I do and I don't. His address was Grants Pass, Oregon, but he was supposed to be on his way back to Alaska now.

Q. Do you know when he sold that sawmill to Mr. Quigmier, is that who owns it now?

Mr. Bell: Object to that. No evidence——

The Court: There was some evidence to that effect. Overruled.

A. I don't know that the sawmill was sold.

Q. When did you last see Mr. Waddel?

A. He was through Homer sometime in the winter.

Q. This last winter?

A. Yes. It has been sometime ago.

(Testimony of Alfred Heady.)

Q. But you don't know whether he has actually sold the sawmill, or not. A. No.

Q. Do you know whether it was operated last summer? A. Yes, it was operated.

Q. Do you know the status of the sawmill now? Has Quigmier left it?

A. Not that I know of.

Q. When you saw Waddel did you discuss the sawmill with him to learn whether or not it had been sold? A. No, I didn't. [97]

Mr. Nesbett: I believe that is all.

The Court: Any further direct examination?

Mr. McCarrey: Just a few questions, your Honor.

Redirect Examination

By Mr. McCarrey:

Q. Mr. Heady, I will ask you, if you know, how much work it was to putting in the window casings? How much time would it consume, if you know?

A. Just to set them in and tie them in it wouldn't take over, I believe, possibly a week.

Q. That is for all of them?

A. That is not finishing the casing, but as they were put in during the winter.

Q. Did Mr. Slavin finish the casings?

A. Not all of them, no.

The Court: Any further questions — further cross-examination?

(No response.)

(Testimony of Alfred Heady.)

The Court: Have the members of the jury any questions?

Juror Tom Kovac: How far is that sawmill from your hotel?

The Witness: Around two miles.

Juror Alfred M. Lee: You said that Mr. Waddel helped you in some carpenter work, didn't you?

The Witness: Yes. [98]

Juror Alfred M. Lee: Did you keep a record of his time?

The Witness: Yes.

Juror Alfred M. Lee: Thank you.

The Court: Counsel for plaintiff wishes to——

Recross Examination

By Mr. Nesbett:

Q. Mr. Waddel at the time was working off a one thousand dollar debt, wasn't he, to you?

A. It was around a thousand dollars, yes.

ESTHER HEADY

called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct Examination

By Mr. McCarrey:

Q. Your name is Esther Heady? A. Yes.

Q. You are one of the defendants in this cause of action of Larry Slavin versus Alfred Heady and Ether Heady? A. Yes.

(Testimony of Esther Heady.)

Q. I will ask if you recall the conversation had between Mr. Slavin and Mr. Heady about the 2nd of October, 1947? A. Yes.

Q. Who was present?

A. It was right at lunch time, we three and Tommy Wickland.

Q. What, if anything, was said then? [99]

A. Mr. Slavin came in with Tommy, said he had worked a couple of hours, and that he would be here a couple of weeks before leaving for the outside and was going to help them on the building just for his room and board.

Q. What, if anything, was said in reply to that?

A. Mr. Heady and I both told him at that time that there was no work there for him and didn't encourage him to stay.

Q. Was there anything else said at that time?

A. Nothing.

Q. Did Mr. Heady say he didn't have any money to pay him?

A. Yes, Mr. Heady did then and I mentioned it to him later.

Q. Mr. Heady mentioned it? A. Yes.

Q. What was said?

A. That he had no money to pay him and there wasn't enough material to keep him and Tommy busy.

Q. Did Mr. Slavin board with you?

A. Yes.

Q. How long did he board with you?

A. All the time until he went outside.

(Testimony of Esther Heady.)

Q. Did he ever complain about his board?

A. No.

Q. Did he eat all of his meals there?

A. Yes.

Q. Did you hear Mr. Slavin testify he had his own bedding [100] and did his own washing?

A. Yes. I didn't do his washing for him until we moved down to the hotel.

Q. Did you help him at this time with his washing?

A. Yes, he washed with the family wash.

Q. Did you help him do his blanket sheets?

A. Yes.

Q. Did you help him make his bed over there?

A. They usually made their own beds. Sometimes I changed the beds.

Q. What hours did Mr. Heady, Mr. Slavin and Mr. Wickland work while he was there?

A. They didn't work regular hours.

Q. How many days? How did they work?

A. I don't know. They didn't work any steady time and never on Sundays.

Q. Did they work the week of Christmas?

A. No.

Q. Are you sure of that? A. Yes.

Q. How do you know that?

A. Because they got on my nerves. I did and they didn't.

Q. Did they work on New Years? A. No.

Q. I believe Mr. Heady came to Anchorage sometime during the [101] early part of January?

(Testimony of Esther Heady.)

A. Yes.

Q. Did he? A. Yes.

Q. Did Mr. Slavin work while Mr. Heady was in Anchorage?

A. At that time he was getting his land surveyed, because he was going to sell it in lots, and he had a man interested and he took him out several times.

Q. How many days was Mr. Heady in Anchorage if you recall? A. Close to a week.

Q. During this period of time that Mr. Slavin was having his homestead surveyed did he work?

A. I know he was drawing maps and going out to the homestead quite a bit.

Q. How do you know Mr. Slavin was drawing maps? A. It was there at the hotel.

Q. Did you see them? A. Yes.

Q. Where were they drawing them?

A. I don't know. The hotel was so open then, I don't know.

Q. What time of day were they drawing those maps? A. During the day.

Q. You are sure it wasn't at night?

A. No, it was during the day.

Q. Has Mr. Slavin ever made demand upon you for these purported wages. [102] A. No.

Q. I will ask you whether or not, if you know, he has ever made demand on Mr. Heady?

A. No.

Q. I will ask you if you know whether or not Mr. Slavin worked for you and Mr. Heady sixteen

(Testimony of Esther Heady.)

weeks of forty hours each between October 2, 1947, and January 23, 1948?

Mr. Nesbett: Objection.

The Court: Overruled.

A. What was the question?

Q. Did Mr. Slavin work for you and Mr. Heady sixteen weeks of forty hours each between October 2, 1947, and January 23, 1948?

A. No, sir.

Q. You are sure of that? A. Yes.

Mr. McCarrey: That is all.

The Court: Counsel for plaintiff may examine.

Cross-Examination

By Mr. Nesbett:

Q. You are positive he didn't work sixteen forty hour weeks during the period covered here, Mrs. Heady? A. Yes.

Q. How can you be sure? [103]

A. There was so much of the time there wasn't any work going on at the building.

Q. The sum total of your statement is that you don't think he put in that much time?

A. I don't think he did?

Q. Yes.

A. I know he didn't. That would be practically a full shift every day, and they worked short shifts and days they didn't work at all.

(Testimony of Esther Heady.)

Q. There was days when he worked at night?

A. No.

Q. Your testimony is that he didn't work at night by lamp light?

A. He didn't that I know of.

Q. You heard Mr. Slavin testify that on occasions they did work by lamp light?

Mr. Bell: Object to that. She can testify——

A. I don't believe they did. I know they didn't when I was at the building.

Q. You didn't get into the building until Christmas Eve wasn't it? A. Yes.

Q. Mr. Slavin helped you and your husband move all your gear over from your house?

A. I believe he did. [104]

Q. You were all working frantically to get the building ready for occupancy before the real cold weather set in?

A. They worked whenever they had material.

Q. You say Mr. Heady didn't encourage Mr. Slavin to stay?

A. No, we tried to discourage him.

Q. In what way.

A. Ask him when he was going out, and one time I suggested to him why not go outside and get a job where he could get in his time.

Q. Why did you say that?

A. We didn't need him at the hotel and we were very pressed for money and to board another person was quite an expense.

(Testimony of Esther Heady.)

Q. Did you think that at some time you would have to pay him? A. No.

Mr. Nesbett: That is all.

The Court: Has the jury any questions?

(No response.)

Mr. McCarrey: The defendants rest.

The Court: Any rebuttal testimony?

Mr. Nesbett: Call Mr. Slavin.

LAWRENCE E. SLAVIN

previously called as a witness on behalf of the plaintiff resumed the stand and testified as follows on rebuttal:

Direct Examination

By Mr. Nesbett: [105]

Q. Mr. Slavin, you heard Mrs. Heady testify that—— A. I did.

Q. Wait until I ask the question. You heard her testify that on October 2nd a conversation took place wherein you said you would like to stay around a couple of weeks and work for your room and board. A. Yes, I heard it.

Q. Did you have any money of your own?

A. Yes, I did.

Mr. Bell: Object as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Well, I had somewhat over a thousand dollars in the bank and quite a bit of change in my pocket.

(Testimony of Lawrence E. Slavin.)

Q. Do you know how much you had in your pocket? A. I couldn't say now.

Q. Was that from your work at the cannery?

A. Yes.

Q. Can you look at the bank statement and see exactly how much you had in the bank?

Mr. Bell: Object. No evidence that he didn't have plenty of money.

The Court: Overruled. That is for the jury to decide.

Q. (By Mr. Nesbett). Find October of forty-seven? [106]

A. Yes, I find it here. It varies there at that time. There were deposits made up until October 1st was fourteen hundred dollars, and the 25th it was over three thousand dollars.

Q. How much did you have at the end of January of 1948, on January 23rd?

The Court: I don't think that has any bearing on that. What he had at the time he went to work might have some bearing, but not what he had in January. If there was any contract it was made in October, and not in January.

Mr. Nesbett: That is all.

The Court: Counsel for defendant may examine.

Mr. Bell: That is all.

The Court: Any sur-rebuttal testimony?

Mr. Bell: No, your Honor.

The Court: Counsel for plaintiff may make opening argument to the jury.

Mr. Bell: Would counsel for plaintiff like to agree to a short time, so we can get out of here. Could we agree on fifteen minutes on a side?

Mr. Nesbett: We have already made an agreement, your Honor.

Mr. McCarrey: I have talked to Mr. Nesbett, but Mr. Bell thinks it should be even Stephen.

Mr. Nesbett: We made an agreement outside the hearing of this jury. [107]

The Court: If the agreement was made, however I——

Mr. Bell: I didn't agree to it.

Mr. McCarrey: I did agree, but I told him I would have to see Mr. Bell first to see that it was all right, you know that.

Mr. Nesbett: Oh, yes.

Mr. Bell: We will be perfectly willing to divide the time with him, and make it short.

Mr. Nesbett: Then I suggest that we adjourn and argue the case tomorrow morning. The jury can have the day then to make the decision.

The Court: Ladies and gentlemen, is there any reason why you can't appear at 9:30 in the morning? Is there any objection?

(No response.)

The Court: Perhaps that is the better plan, and then the jury will have daylight hours to deliberate the case. We will be deprived of the services of the jury on another case, but I guess that will be all right. I suppose counsel wouldn't care to go as far as he can with the argument tonight?

Mr. Nesbett: The time we agreed on would take us past the deadline.

The Court: Just the opening, otherwise we will continue it.

Mr. Nesbett: That is all right.

Mr. McCarrey: I wouldn't like to keep the jury out, but I [108] would like to wind the case up.

The Court: In view of the circumstances then, and the requirement that we be out of this room before five, the case will be continued until tomorrow morning at 9:30, and please remember the hour, ladies and gentlemen. If one of you is late we can't go ahead.

You will also remember your duty not to discuss the case among yourselves or with others, or to form or express an opinion until it is finally submitted to you, and if any person should attempt to talk to you about the case please stop him or her right there, because nobody has the right to discuss it with you outside the Court room. It is not good business and it may lead to difficulty.

(Whereupon, at 4:25 o'clock p.m., the court recessed until 9:30 o'clock a.m. of the following day.) [109]

February 9, 1950

The Court: The Clerk will call the roll of the jury.

(The names of the members of the jury were called by the Clerk.)

The Clerk: Jury in the box all present, your Honor.

The Court: Counsel for the plaintiff may make opening argument.

Mr. Nesbett: First, Mr. McNealy asked me to express his appreciation for being excused. If your Honor please, I am going to confine myself to ten minutes, because the issues are relatively simple in the case, and fifteen minutes to reply to Mr. McCarrey and Mr. Bell, assuming they will use only that much time also. Being a civil case, you all know that Mr. Slavin is required to prove his case only——

Mr. McCarrey: Your Honor, we will waive reporting the arguments.

Mr. Nesbett: We will also waive reporting the arguments.

(Whereupon the reporter was excused.)

The Court: Next thing in order is instructions to the jury.

Mr. Bell: Don't you think you could give instruction on that and on the idea that he did say you owe me nothing?

The Court: All the evidence is to be considered, but the [111] defendants himself says——

Mr. Bell: But the statement that you owe me nothing and it is just a gift from heaven.

The Court: It is all before the jury.

Mr. Bell: Mr. Nesbett has drawn it out in his argument.

The Court: I couldn't do that.

Mr. Bell: Let me see it before——

The Court: Oh, yes. Let me read this. I don't

believe I could, but have you a copy of the proposed instruction?

Mr. Nesbett: Not of this one.

The Court: Copy can be given later. I don't intend to give it.

Mr. McCarrey: Exception.

The Court: Ladies and gentlemen, I will now read the instructions.

(Instructions to the Jury are read by the Court.)

The Court: And I have signed the instructions as District Judge. Counsel may come to the bench with the Reporter.

Mr. Nesbett: I want an objection, or rather an exception, to the first Paragraph of No. 3, the second line, that it should be "defendants, or either of them," that particular wording. [112]

The Court: All right, I shall insert that "defendants, or either of them."

Mr. Bell: I object to adding that, because there is no evidence of an agreement referred to only in the presence of both of them.

The Court: Exception is noted.

Mr. Nesbett: I thought the words "going carpenters' wages" should be inserted somewhere in line 7, 8 or 9.

The Court: I will put that between 6 and 7 "at going carpenters' wages."

Mr. Bell: Now, that would be in Homer, Alaska. It wouldn't certainly be here.

The Court: I will put a comma after wages. It

would read, "would be compensated by defendants therefor, at going carpenters' wages,".

Mr. Bell: I want to specifically except to that on the issue as it now stands complete, it infers going capenters wages at Anchorage, and does not infer going carpenters' wages at Homer, where it was performed.

The Court: All right.

Mr. Nesbett: In another part of the instruction you say this constitutes all the testimony?

Mr. Bell: At Homer, not at Anchorage.

The Court: Suppose I insert "at Homer, Alaska," at that point? [113]

Mr. Nesbett: I don't see that it should be limited to Homer.

Mr. McCarrey: I would like to point out the fact that there is quite a little evidence even by the plaintiff that economic conditions at Homer are not so good as elsewhere, so I take exception to that being other than Homer, Alaska.

The Court: The testimony was just going carpenters' wages not particularly at Homer, Alaska.

Mr. McCarrey: Exception.

The Court: All right, Mr. Bell.

Mr. Bell: I want an exception to the first paragraph of Instruction 3, for the reason that it does not state the law carefully, and places too great a burden on the defendants, and is misleading to the jury.

I want the same exception to Paragraph 2 of Instruction 3, commencing on line ten of Instruction 3, for the same reason.

I would like an exception to the third paragraph of Instruction 3, which commences on line fifteen, and extends down to and including line twenty-two; and

An exception to the fourth paragraph of Instruction 3, commencing on line twenty-three, and ending on line thirty-two, for the reason that all of these instructions misstate the law probably applicable to this case, and places too great a burden on the defendants, and is based only upon [114] the plaintiff's contention in the case, and the defendants' contentions having been completely ignored.

Mr. McCarrey: It has been ignored—that is defendants' theory of the case has been ignored, in that defendants' theory has been that it was an agreement entered into at the time that the work began, that is the determining factor and not the reasonable value of services, or the going wages.

The Court: I think that may be the last part of the last paragraph should be amended, “* * * for if you find that the agreement between the parties was to the effect,” after the word “compensation.”

Mr. Bell: On line twenty-nine?

The Court: Yes, after the word “compensation,” I think probably this language ought to be inserted, “or if in your minds the evidence is equally balanced between the plaintiff and the defendants on this question.”

Mr. Bell: Now, your Honor, I want to keep this one. There is one other here that I want to take. I take exception to Instruction No. 7 in its entirety, for the reason that it deprives the jury of a method

of reasoning the amount due, and if they do arrive at an amount by striking lots it would still have to be concurred in by all of the parties before it would be their verdict, and therefore it places too great a burden on the defendants in this case.

The Court: I don't know whether that word should be—I [115] will strike out "the compensation agreed upon," that is before the words "for his service."

Mr. Nesbett: Strike out the word "reasonable."

The Court: Yes. Do you want to take any further exceptions.

Mr. Bell: None whatever, but I do want to offer that.

The Court: The Court refuses to give the Instruction No. 1 submitted by the defendants except as some parts of it may conceivably be included in the instructions. It is denied as submitted.

The Court: Ladies and gentlemen, since reading the instructions there have been changes, and I will now read it:

The issue in this case is a relatively simple one, and that is whether or not the plaintiff and defendants or either of them agreed that plaintiff should work for the defendant in the construction work described in the pleadings and in the testimony and would be compensated by defendants therefor, at going carpenters' wages, no exact amount of compensation having been agreed upon, or whether plaintiff agreed to work for his board and lodging only.

If such agreement was made as claimed by plain-

tiff, then the plaintiff is entitled to the compensation agreed upon for his services and as bearing upon that issue, you may take into consideration all testimony relating to compensation [116] paid for similar work under similar conditions.

If you find that the agreement was entered into as claimed by the plaintiff in his complaint, as modified by his reply, and that he rendered the services which he claims to have rendered, and that he has not been paid for such services, then your verdict should be for the plaintiff and against the defendants for such amount as you find the plaintiff justly entitled to recover from the defendants for the services so rendered.

But unless the plaintiff has proved the averments of his complaint, as modified by his reply, by a preponderance of the evidence, your verdict should be for the defendants and against the plaintiff, for if you find that the agreement between the parties was to the effect that the plaintiff would work for his board and room only, and that there was no agreement to give him any other compensation, or if in your minds the evidence is equally balanced between plaintiff and defendants on this question, then the plaintiff is not entitled to recover from the defendants in this action and your verdict should be for the defendants and against the plaintiff.

The Court: Now, these are no more important than the rest of the instructions, and are a part of the instructions. They are entitled to just as much consideration as the other instructions.

The two alternate jurors, Mr. Longmire [117] and

Mr. Nielsen, are now excused with the thanks of the Court. Please report back here at two o'clock this afternoon for service in another case.

Here are two forms of verdicts for you. Have you the pleadings?

The Clerk: No, I haven't, your Honor.

The Court: There is only one exhibit, I believe.

The Clerk: Yes.

The Court: I hand you all the pleadings, consisting of the complaint, answer and reply.

The Clerk: Will the bailiff step forward, please.

(Clerk swears the bailiff, John H. Mack.)

The Court: Does counsel wish to stipulate that the jury may return a sealed verdict, if no verdict has been reached by 5 o'clock this afternoon?

Mr. McCarrey: It is all right with us.

Mr. Nesbett: We will so stipulate.

The Court: Ladies and Gentlemen, while we hope that you will be able to reach a verdict before five o'clock, if you have not reached a verdict by five o'clock this afternoon, then you may return a sealed verdict. I will presently read to you the endorsement on the envelope.

You will provide the jurors with food and liquids, except alcohols, of course. I don't know whether you can use the jury room. [118]

The Court: The endorsement on the sealed verdict is as follows:

Ladies and Gentlemen of the Jury:

If you have not reached a verdict by 5:00 o'clock p.m., today, then when you have agreed upon a verdict, have the foreman sign the same, seal it up

in this envelope, and keep it in his possession, unopened.

You may then separate and go to your homes.

No juror must say anything about the verdict agreed upon.

All jurors must be in the jury box in court at 10 o'clock a.m., of Friday, Feb. 10, 1950, at which time the verdict will be handed to the Court and opened in the presence of the jury.

Dated at Anchorage, Alaska, this 9th day of Feb. 1950.

I signed it as District Judge, and it has been signed by counsel for plaintiff and for defendants.

Ladies and gentlemen, you may now retire to consider of your verdict.

(Whereupon at 11:25 a.m., February 9, 1950, the jury retired in charge of their sworn bailiff, John H. Mack.) [119]

Thereafter, at 3:25 o'clock p.m., of the same day, February 9, 1950, Court is reconvened, and the trial jury in the above entitled cause reports back.

The Court: Mr. Bell, is it necessary to have Mr. McCarrey here for this verdict?

Mr. Bell: I think not, your Honor. I will take the responsibility of watching things.

The Court: The roll of the jury may be called in the case of Lawrence E. Slavin against Alfred E. Heady and Esther Heady.

(Whereupon the Clerk calls the roll.)

The Clerk: All present, your Honor.

The Court: Ladies and gentlemen, have you arrived at a verdict in this case?

Mr. H. L. Bliss, Foreman: We have, your Honor.

The Court: Will you hand the verdict to the Clerk. The Clerk will read the verdict signed by the Foreman.

The Clerk:

“In the District Court for the Territory of Alaska
Third Division

LAWRENCE E. SLAVIN,

Plaintiff,

vs.

ALFRED HEADY and ESTHER HEADY d/b/a
HEADY HOTEL,

Defendants.

“No. Sel—5707

Verdict No. I.

We, the jury, duly selected, impaneled and sworn to try the above entitled cause, do find for the plaintiff and against the defendants, and find that the plaintiff is entitled to recover of and from the defendants the sum of Twelve Hundred Eighty 00/100 Dollars (\$1280.00), together with interest thereon at the rate of 6 per cent per annum from January 23, 1948.

Dated at Anchorage, Alaska, this 9th day of February, 1950.

H. L. BLISS,
Foreman.”

The Court: Ladies and gentlemen, you have heard the verdict just read. Is that your verdict, so say you all.

Jury: Yes.

The Court: Do you care to have the jury polled.

Mr. Bell: I would.

The Clerk: Bertha Miers, is that your verdict?

Bertha Miers: It is.

The Clerk: Mrs. Lorene Gray, is that your verdict?

Mrs. Lorene Gray: Yes.

The Clerk: Jean Wright, is that your verdict?

Jean Wright: It is.

The Clerk: Richard D. Huff, is that your verdict? [121]

Richard D. Huff: It is.

The Clerk: Wardie W. King, is that your verdict?

Wardie W. King: It is.

The Clerk: Robert Claypool, is that your verdict?

Robert Claypool: Yes.

The Clerk: Orie P. Ivie, is that your verdict?

Orie P. Ivie: It is.

The Clerk: Tom Kovak, is that your verdict?

Tom Kovak: It is.

The Clerk: Mary Bolan, is that your verdict?

Mary Bolan: Yes.

The Clerk: Edward Nightingale, is the verdict your verdict?

Edward Nightingale: It is.

The Clerk: Alfred M. Lee?

Alfred M. Lee: It is.

The Clerk: H. L. Bliss?

H. L. Bliss: It is.

The Clerk: The jury has been polled, your Honor.

The Court: The verdict may be received, filed and entered. Thank you for your service, Ladies and Gentlemen, you are now excused until 10 o'clock tomorrow morning, when you will report to the Court Room in the Federal Building. [122]

United States of America,
Territory of Alaska—ss.

I, Lorraine Clarke, the Official Special Court Reporter for the District Court of the United States, Third Division, Territory of Alaska, hereby certify the above and foregoing 123 pages to be a true and correct transcript of the proceedings had in the above-entitled matter in said court at the time and place as set forth.

/s/ LORRAINE CLARKE.

[Endorsed]: Filed June 2, 1950. [123]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, M. E. S. Brunelle, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure, and pursuant to designation of Counsel, I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceeding, and including specifically the complete record and file of such action as set forth in the amended Designation of Record.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above-entitled cause by the above-entitled Court on February 24, 1950, to the United States Court of Appeals at San Francisco, California.

M. E. S. BRUNELLE,
Clerk of the District Court for the Territory of
Alaska, Third Division.

[Seal] By /s/ IOLA FOWLER,

Chief Deputy Clerk. [124]

[Endorsed]: No. 12569. United States Court of Appeals for the Ninth Circuit. Alfred Heady and Esther Heady, doing business as Heady Hotel, Appellants vs. Lawrence E. Slavin, Appellee. Transcript of Record. Appeal from District Court for the Territory of Alaska, Third Division.

Filed June 6, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

